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SUPREME COURT OF THE UNITED STATES.

No. 135.

FINLEY McKINLEY, and ALEXANDER GARRIOCK, composing the Firm of McKINLAY, GARRIOCK & Co., Appellants,

vs.

WILLIAM MORRISH, Master and Claim't of the Ship "Pons Aelii," on behalf of ROBERT and EDWARD FORMBY, owners of said Ship.

APPEAL FROM THE CIRCUIT COURT U. S. FOR THE DISTRICT OF CALIFORNIA.

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UNITED STATES OF AMERICA,
Northern District of California.

Before the Judges of the Circuit Court of the United States for the Districts of California, in and for the Northern District thereof, at the Court House, in the City of San Francisco, on the 5th day of March of the September Term, in the year of our Lord one thousand eight hundred and fifty-seven.

Witness the Hon. M. Hall McAllister and the Hon. Ogden Hoffman, Judges of said Court, Northern District of California, ss.

Be it remembered, that at the present September term, in the year of our Lord one thousand eight hundred and fifty-seven, before the Hon. M. Hall McAllister, one of the Judges of the Circuit Court of the United States for the District of California, came McKinley, Garrioch & Co., appellants, by their proctors, Manchester and Hodges, and brought into said Court, before the aforesaid Judge thereof, a certain transcript of record and appeal from the District Court of the United States for said Northern District of California, which said transcript of record and appeal, together with the Clerk's certificate appended thereto, follows in these words, that is to say:—

Libel.

In Admiralty.

To the Honorable Ogden Hoffman, Junior, Judge of the United States District Court, for the Northern District of California.

The libel of Finlay McKinlay and Alexander Garrioch, merchants, residing in the City of San Francisco and State of California, and composing the firm of McKinlay, Garrioch & Company, against the ship or vessel called the Pons Aelii, whereof Robinson was and is master, her tacke, apparel, and furniture, and against all persons intervening for their interest therein, in a cause of contract, civil and maritime, alleges as follows:—

First. That some time in the month of June, 1854, Messrs. Mathew Steele and son, of Liverpool, England, shipped on board said ship, then lying in said port of Liverpool, and bound to the port of Honolulu, and the said port of San Francisco, in good order and well conditioned, to be carried and transported in said ship to said port of San Francisco, and delivered to libellants in like good order, four thousand two hundred and twenty boxes of soap, for the freight

of one hundred and five shillings, British sterling, per ton weight, and five per cent. primage, payable in Liverpool, vessel lost or not lost, with average accustomed, the said Mathew Steele & Son receiving therefor, from said master, a bill of lading, a receipt and contract, whereby and wherein the said master charged his body and goods, and also the vessel, her tackle, apparel, and furniture, for the performance of said contract, a copy of which is hereunto annexed, and made part of this libel.

Second. That said vessel sailed from said port of Liverpool for said port of San Francisco, with said soap on board, where she arrived on or about the 10th day of June, 1855, and where she now is.

That the freight and primage for said soap, amounting to £305 3 1, was paid in Liverpool, agreeably to the agreement of said bill of lading.

That libellants have been at all times ready and willing, and now are ready and willing, to receive said soap in good order, yet said master has not delivered said soap to libellants in good order and well conditioned, but owing to the want of proper care on the part of said master, his officers and crew, and persons employed by him or them in loading, stowing, landing, and in unloading, restowing, and transhipping said soap, and owing to the careless, negligent, and improper manner in which said soap was stowed on board said vessel, and owing to the deck of said vessel being allowed by said master to be and remain in an open and leaky condition, whereby the water thrown or falling thereon was allowed to pass through and down upon said soap stowed beneath, said soap became and is greatly injured and damaged, and libellants have thereby sustained great damage, to wit, damage to the amount of nine thousand five hundred and twenty-five dollars.

Third. That said ship is a foreign vessel, and is about to leave this port and the United States, and said master has refused, and still does refuse, to pay said damage, and to deliver said soap in good order, so that libellants will be without remedy, except by proceedings against said vessel, her tackle, apparel, and furniture.

Fourth. That all singular, the premises are true and within the admiralty and maritime jurisdiction of the United States and of this honorable Court.

Wherefore libellants pray that process, in due form of law, according to the course of this honorable Court in cases of admiralty and maritime jurisdiction, may issue against said master and against said vessel, her tackle, apparel, and furniture, and that all persons claiming any interest therein may be cited to appear and answer all and singular the matters aforesaid, and that this honorable Court would be pleased to decree the payment of the damages aforesaid, with costs, and that said vessel may be condemned and sold to pay the

same, and that libellants may have such other and further relief in the premises as in law and justice they may be entitled to receive.

F. McKINLAY.

Sworn before me this 20th day of June, 1855.

W. H. CHEVERS,
U. S. Com'r.

MANCHESTER & HODGES,
Proctors for Libellants.

M. G. & Co.,	3900	[STAMP.]
M. G.,	200	one box less 2 bars.
M. G.,	120	
	4220	boxes soap.

1107. 16 @ 105 £290 12 6
50 per ct. 14 10 7

£305 3 1

To be taken from the ship at the consignee's risk and expense.

Shipped in good order and condition, by Mathew Steele & Son, of Liverpool, in and upon the good ship or vessel called the Pons Ælii, whereof Robinson is master for this present voyage, and now lying in the port of Liverpool, and bound for San Francisco and Honolulu, four thousand two hundred and twenty boxes soap, being marked as per margin; and are to be delivered in like good order and condition at the aforesaid port of San Francisco (all and every of the dangers and accidents of the seas and navigation of whatsoever nature and kind excepted), unto Messrs. McKinlay, Garrioch & Co., or to their assigns. Freight for the said goods at the rate of one hundred and five shillings per ton weight, and five per cent. primage payable in Liverpool, vessel lost or not lost, with average accustomed. In witness whereof the master or purser of the said ship or vessel has affirmed to three bills of lading, all of this tenor and date, one of which being accomplished, the rest to stand void.

Dated in Liverpool this 21st day of June, 1854.

Weight and contents unknown.

W. ROBINSON.

Endorsed: Filed June 20th, 1855.

JOHN A. MONROE,
Clerk.

By W. H. CHEVERS,
Deputy.

Libellants' Stipulation for Costs.

UNITED STATES OF AMERICA,

District Court of the United States for the Northern District of California.

Whereas, a libel was filed in this Court on the 20th day of June, in the year of our Lord one thousand eight hundred and fifty-five, by F. McKinlay *et al.* against the ship Pons Ælii, for reasons and causes in the said libel mentioned, and the said F. McKinlay and Oliver Dean and James H. Wallace, his sureties, parties hereto hereby consenting and agreeing that in case of default or contumacy on the part of the said libellants or his sureties, execution may issue against their goods, chattels and lands for the sum of five hundred dollars.

Now, therefore, it is hereby stipulated and agreed for the benefit of whom it may concern, that the undersigned shall be and each of them is bound in the sum of five hundred dollars, conditioned the libellants above named shall pay all costs and charges that may be awarded against them in any decree by this Court.

F. McKINLAY,
OLIVER DEAN,
JAMES H. WALLACE.

Taken and acknowledged this 20th day of June, 1855, before me.

W. H. CHEVERS,
U. S. Commissioner.

Northern District of California, ss.

Oliver Dean and James H. Wallace, parties to the above stipulation, being duly sworn, do depose and say, each for himself, that he is worth the sum of five hundred dollars over and above all his just debts and liabilities.

JAMES H. WALLACE.
OLIVER DEAN,

Sworn to this 20th day of June, 1855, before me,

W. H. CHEVERS,
U. S. Commissioner.

Filed the 20th day of June, 1855.

Claim and Answer.

In Admiralty.

To the Hon. Ogden Hoffman, Jr., Judge of the United States District Court for the Northern District of California.

The claim and answer of William Morrish, Master of the British Barque Pons Aelii, intervening on behalf of Robert and Edward

Formby, merchants, residing in Liverpool, owners of the said vessel, to the libel of Finlay McKinlay, and Alexander Garrioch, against the said vessel in a cause of contract civil and maritime.

First. The said respondent avers that Robert and Edward Foumby, of the City of Liverpool, in the United Kingdom of Great Britain and Ireland, are the true and lawful owners of the said barque Pons Aelii, and that no other person is the owner thereof.

Second. This respondent doth admit the truth of the allegations contained in the first article of said libel.

Third. This respondent, denying the allegation contained in the second article of the said libel, that said libellants were, and are willing to receive the said soap, does distinctly aver that the said soap has been duly tendered to libellants, who have declined and refused to accept the same, and in consequence of such refusal, this respondent has been compelled to discharge the soap, and to store the same in the warehouse of one Wilson Flint, in whose custody it now remains subject to the order of said libellants.

And this respondent furthermore denying the want of proper care on the part of the said master, his officers and crew, or of persons by them employed in loading and stowing the cargo on board said vessel, or of negligence, carelessness, or improper manner of stowing said soap, or of allowing the decks of said vessel to remain in an open, or leaky condition, or that the said soap has by reason of said causes been greatly damaged, does distinctly aver, that if any damage or injury has occurred to the said soap, the same has arisen and occurred wholly from causes beyond the control of the said master, his officers and crew, and are to be attributed to the perils of the sea, excepted to and against in the bill of lading referred to in said libel.

Fourth. And the said respondent avers that the said barque Pons Aelii, at the time of sailing from the port of Liverpool with the said soap laden on board, was in good, tight, staunch, and strong condition, well manned, her cargo well dunnaged and stowed; that in course of the voyage to Honolulu, the said vessel was overtaken by heavy storms and gales, that caused the vessel to labor, strain, and leak, and that it became necessary in course of the storm to lighten the vessel by throwing overboard a portion of cargo, to wit, a quantity of slate, that such jettison was resorted to for the preservation of the vessel and cargo, that during the voyage every measure of precaution was adopted to preserve the cargo laden on board said vessel from injury that was practically within the power of the said master, his officers, or crew.

Wherefore this respondent prays this Honorable Court to pro-

nounce against the said libel with costs, and to decree restitution of the said vessel.

WILL'M MORRISH.

Sworn and subscribed to before me this 27th June, 1855.

W. H. CHEVERS,
U. S. Com'r.

Endorsed: Filed June 27th, 1855.

JOHN A. MONROE,
Clerk.

By W. H. CHEVERS,
Deputy.

Claimants' Stipulation for Costs.

UNITED STATES OF AMERICA,
District Court of the United States
for the Northern District of California.

Whereas, a libel was filed in this Court on the 20th day of June, in the year of our Lord one thousand eight hundred and fifty-five, by F. McKinlay *et al.* against the ship Pons Aelii, her tackle, &c., for reasons and causes in the said libel mentioned; and whereas, Wm. Morrish has this day filed his answer and claim herein as master and agent of the owners of said ship, and the said William Morrish and Richard Hellmann, and Adolphus Elhrhorn, his sureties, parties hereto, hereby consenting and agreeing that in case of default or contumacy on the part of the said claimants or his sureties execution may issue against their goods, chattels, and lands, for the sum of five hundred dollars.

Now, therefore, it is hereby stipulated and agreed, for the benefit of whom it may concern, that the undersigned shall be, and each of them is, bound in the sum of five hundred dollars, conditioned the claimants above named shall pay all costs and charges that may be awarded against them in any decree by this Court.

WILLIAM MORRISH,
RICHARD HELLMANN,
ADOLPHUS EHRHORN.

Taken and acknowledged this 27th day of June, 1855, before me,

W. H. CHEVERS,
U. S. Commissioner.

NORTHERN DISTRICT OF CALIFORNIA, *ss.*

Richard Hellmann and A. Ehrhorn, parties to the above stipulation, being duly sworn, do depose and say, each for himself, that he

is worth the sum of five hundred dollars over and above all his just debts and liabilities.

RICHARD HELLMANN,
ADOLPHUS EHRHORN.

Sworn to this 27th day of June, 1855, before me,

W. H. CHEVERS,
U. S. Commissioner.

Filed the 27th day of June, 1855.

Monition.

NORTHERN DISTRICT OF CALIFORNIA, *ss.*

[SEAL.] The President of the United States of America to the Marshall of the Northern District of California, greeting:

Whereas a libel hath been filed in the District Court of the United States for the Northern District of California on the 20th day of June, in the year of our Lord one thousand eight hundred and fifty-five, by F. McKinlay *et als.* against the ship Pons Aelii, her tackle, apparel, and furniture, for the reasons and causes in the said libel mentioned, and praying the usual process and monition of the said Court in that behalf to be made, and that all persons interested in the said ship or vessel, her tackle, &c., may be cited in general and special to answer the premises, and all proceedings being had that the said ship or vessel, her tackle, &c., may, for the causes in the said libel mentioned, be condemned and sold to pay the demands of the libellant.

You are therefore hereby commanded to attach the said ship or vessel, her tackle, &c., and to detain the same in your custody until the further order of the Court respecting the same, and to give due notice to all persons claiming the same, or knowing or having anything to say why the same should not be condemned and sold pursuant to the prayer of the said libel, and that they be and appear before the said Court, to be held in and for the Northern District of California, on the third day of July next, at eleven o'clock in the forenoon of the same day, if the same day shall be a day of jurisdiction, otherwise on the next day of jurisdiction thereafter, then and there to interpose a claim for the same and to make their allegations in that behalf, and what you shall have done in the premises do you then and there make return thereof together with this writ.

Witness the Honorable Ogden Hoffman, Jr., Judge of said Court, at the City of San Francisco, in the Northern District of California, this 20th day of June, in the year of our Lord one thousand eight hundred and fifty-five, and of our independence the seventy-ninth.

JOHN A. MONROE,
Clerk.

By W. H. CHEVERS,
Deputy.

nounce against the said libel with costs, and to decree restitution of the said vessel.

WILL'M MORRISH.

Sworn and subscribed to before me this 27th June, 1855.

W. H. CHEVERS,
U. S. Com'r.

Endorsed: Filed June 27th, 1855.

JOHN A. MONROE,
Clerk.

By W. H. CHEVERS,
Deputy.

Claimants' Stipulation for Costs.

UNITED STATES OF AMERICA,
District Court of the United States
for the Northern District of California.

Whereas, a libel was filed in this Court on the 20th day of June, in the year of our Lord one thousand eight hundred and fifty-five, by F. McKinlay *et al.* against the ship Pons Aelii, her tackle, &c., for reasons and causes in the said libel mentioned; and whereas, Wm. Morrish has this day filed his answer and claim herein as master and agent of the owners of said ship, and the said William Morrish and Richard Hellmann, and Adolphus Elhrhorn, his sureties, parties hereto, hereby consenting and agreeing that in case of default or contumacy on the part of the said claimants or his sureties execution may issue against their goods, chattels, and lands, for the sum of five hundred dollars.

Now, therefore, it is hereby stipulated and agreed, for the benefit of whom it may concern, that the undersigned shall be, and each of them is, bound in the sum of five hundred dollars, conditioned the claimants above named shall pay all costs and charges that may be awarded against them in any decree by this Court.

WILLIAM MORRISH,
RICHARD HELLMANN,
ADOLPHUS EHRHORN.

Taken and acknowledged this 27th day of June, 1855, before me,

W. H. CHEVERS,
U. S. Commissioner.

NORTHERN DISTRICT OF CALIFORNIA, *ss.*

Richard Hellmann and A. Ehrhorn, parties to the above stipulation, being duly sworn, do depose and say, each for himself, that he

is worth the sum of five hundred dollars over and above all his just debts and liabilities.

RICHARD HELLMANN,
ADOLPHUS EHRHORN.

Sworn to this 27th day of June, 1855, before me,

W. H. CHEVERS,
U. S. Commissioner.

Filed the 27th day of June, 1855.

Monition.

NORTHERN DISTRICT OF CALIFORNIA, *ss.*

[SEAL.] The President of the United States of America to the Marshall of the Northern District of California, greeting:

Whereas a libel hath been filed in the District Court of the United States for the Northern District of California on the 20th day of June, in the year of our Lord one thousand eight hundred and fifty-five, by F. McKinlay *et als.* against the ship Pons Aelii, her tackle, apparel, and furniture, for the reasons and causes in the said libel mentioned, and praying the usual process and monition of the said Court in that behalf to be made, and that all persons interested in the said ship or vessel, her tackle, &c., may be cited in general and special to answer the premises, and all proceedings being had that the said ship or vessel, her tackle, &c., may, for the causes in the said libel mentioned, be condemned and sold to pay the demands of the libellant.

You are therefore hereby commanded to attach the said ship or vessel, her tackle, &c., and to detain the same in your custody until the further order of the Court respecting the same, and to give due notice to all persons claiming the same, or knowing or having anything to say why the same should not be condemned and sold pursuant to the prayer of the said libel, and that they be and appear before the said Court, to be held in and for the Northern District of California, on the third day of July next, at eleven o'clock in the forenoon of the same day, if the same day shall be a day of jurisdiction, otherwise on the next day of jurisdiction thereafter, then and there to interpose a claim for the same and to make their allegations in that behalf, and what you shall have done in the premises do you then and there make return thereof together with this writ.

Witness the Honorable Ogden Hoffman, Jr., Judge of said Court, at the City of San Francisco, in the Northern District of California, this 20th day of June, in the year of our Lord one thousand eight hundred and fifty-five, and of our independence the seventy-ninth.

JOHN A. MONROE,
Clerk.

By W. H. CHEVERS,
Deputy.

In obedience to the within monition, I attached the ship therein described on the 20th day of June, A. D. 1855, and had given due notice to all persons claiming the same that this Court will, on the 3d day of July inst. (if that day should be a day of jurisdiction, if not, on the next day of jurisdiction thereafter), proceed to the trial and condemnation thereof, should no claim be interposed for the same.

W. H. RICHARDSON,
U. S. Marshal.

By E. C. PALMER,
Deputy.

Dated June 20th, 1855.

Endorsed: Filed the third day of July, 1855.

JOHN A. MONROE,
Clerk.

By W. H. CHEVERS,
Deputy.

Replication.

U. S. DIS. COURT,
Northern Dist. of Cal., ss.

In Admiralty.

F. MCKINLAY & A. GARRIOCH
vs.
THE SHIP PONS AELII, &c.

The above libellants for replication to the answer of the respondent herein allege that they will ever maintain and prove their libel to be true, certain, and sufficient, and that the said answer is uncertain, untrue, and insufficient, and they humbly pray as in and by said libel they have already prayed.

MANCHESTER & HODGES,
Proctors for Libellants.

Endorsed: Filed July 3d, 1855.

JOHN A. MONROE,
Clerk.

By W. H. CHEVERS,
Deputy.

Order that Libellants give Additional Security.

At a stated term of the District Court of the United States of America for the Northern District of California, held at the court-house in the city of San Francisco, on Tuesday, the 31st day of

July, in the year of our Lord one thousand eight hundred and fifty-five. Present—the Honorable Ogden Hoffman, Jr., District Judge.

F. McKinlay *et al.*
vs.
Ship Pons Aelii.

On motion of J. P. Haven, Esq., Proctor for claimants, ordered by the Court that the above named libellants give additional security for costs in the sum of $500.

Endorsed: Filed July 31st, 1855.

JOHN A. MONROE,
Clerk.

By W. H. CHEVERS,
Deputy.

Stipulation to Bond.

U. S. District Court
for the Nor. Dis. of California.

In Admiralty.

McKinlay, Garrioch & Co.,
vs.
Bark Pons Aelii *et al.*

It is hereby stipulated and consented by the parties to the above entitled cause, that the barque Pons Aelii, her tackle, &c., be discharged from the custody of the U. S. Marshal, upon the claimants filing approved bonds in the sum of seven thousand dollars.

J. B. MANCHESTER,
Proctor for Libellants.

J. P. HAVEN,
Proctor for Respondents.

Endorsed: Filed August 30th, 1855.

JOHN A. MONROE,
Clerk.

By W. H. CHEVERS,
Deputy.

Bond for Release.

Know all men by these presents, that we, William Morrish, principal, and Richard Hellmann and Edward Hellmann, sureties, are held and firmly bound unto W. H. Richardson, Marshal of the U. S. for the N. D. of California, in the sum of seven thousand dollars, lawful money of the United States of America, to be paid to the said W. H. Richardson, Marshal, &c., his successors, executors, administrators, or assigns, to which payment well and truly to be made, we

bind ourselves and each of us jointly and severally, our and each of our heirs, executors, and administrators, firmly by these presents, sealed with our seals. Dated this 30th day of August, in the year of our Lord one thousand eight hundred and fifty-five.

Whereas, a libel has been filed in the District Court of the United States for the Northern District of California, on the 20th day of June, 1855, by F. McKinlay *et al.*, against the ship or vessel called the Pons Aelii, in a certain action, &c., civil and maritime, for therein alleged to be due and owing to the said libellant, amounting to nine thousand five hundred and twenty-five dollars. The condition of this obligation is such that if the above bounden William Morrish, Richard Hellmann, and Edward Hellmann, shall abide and answer the decree of the Court in such cause, then the above obligation to be void; otherwise to remain in full force and virtue.

WILLIAM MORRISH, [SEAL.]
RICHARD HELLMANN, [SEAL.]
EDWARD HELLMANN, [SEAL.]

Sealed and delivered in presence of
W. H. CHEVERS.

NORTHERN DISTRICT OF CALIFORNIA, *ss.*

Richard Hellmann, and Edward Hellmann, being duly sworn each for himself, says that he resides in San Francisco, and that he is worth the sum of seven thousand dollars, over and above all his just debts and liabilities.

RICHARD HELLMANN.
EDWARD HELLMANN.

Sworn before me this 30th day of August, 1855.

JOHN A. MONROE,
Clerk.
By W. H. CHEVERS,
Deputy.

Approved, Ogden Hoffman, U. S. Dist. Judge.

Endorsed: Filed August 30th, 1855.

JOHN A. MONROE,
Clerk.
By W. H. CHEVERS,
Deputy.

Substitution of Proctors.

U. S. DISTRICT COURT,
Nor. Dist. of California.

In Admiralty.

MCKINLAY, GARRIOCH *et als.*
vs.
BARQUE PONS AELII.

Henry P. Hepburn, Esq., is hereby substituted as proctor in the above entitled cause on behalf of the claimants.

J. P. HAVEN,
Proctor for Respondents.

San Francisco, October 18, 1853.

Endorsed: Filed Oct. 17th, 1855.

JOHN A. MONROE,
Clerk.

By W. H. CHEVRES,
Deputy.

At a stated term of the District Court of the United States of America for the Northern District of California, held at the Court House in the City of San Francisco, on Thursday the 10th day of January, in the year of our Lord, one thousand eight hundred and fifty-six.

Present, the Honorable Ogden Hoffman, Jr., District Judge.

Decree Dismissing Libel.

F. MCKINLAY *et al.*
vs.
SHIP PONS AELII.

This cause coming on to be heard on the pleadings and proofs, and having been argued by the advocates for the respective parties, and due deliberation being had in the premises, it is ordered, adjudged, and decreed by the Court, that the libel of the said libellants be dismissed, and that the claimants recover of the said libellants their costs to be taxed.

OGDEN HOFFMAN, Jr.,
U. S. Dist. Judge.

Endorsed: Filed January 10, 1856.

JOHN A. MONROE,
Clerk.

By W. H. CHEVERS,
Deputy.

Notice of Appeal.

U. S. DISTRICT COURT,
Northern District of Cal., ss:

In Admiralty.

FINLAY MCKINLAY AND ALEXANDER GARRIOCH
vs.
THE SHIP PONS AELII, &c.

The libellants intend to appeal from the final decree of the Court in this cause.

Dated Jan. 18th, 1856.

MANCHESTER & HODGES,
Proctors for Libellants.

To John A. Monroe, Esq., Clerk.

Endorsed: Filed January 18th, 1856.

JOHN A. MONROE,
Clerk.

By W. H. CHEVERS,
Deputy.

Appeal.

CIRCUIT COURT OF THE UNITED STATES,
Northern District of California.

In Admiralty.

FINLAY MCKINLAY AND ALEXANDER GARRIOCH, appellants,
vs.
THE SHIP PONS AELLII, appellee.

To the Honorable the Circuit Court for the Northern District of California. The appeal of the above appellants respectfully showeth that on or about the 20th day of June, 1855, the above appellants exhibited their libel in the District Court of the United States for the Northern District of California, against said ship Pons Aelii, her tackle, apparel, and furniture, &c., claiming the sum of $9,525 damages for reasons set forth in said libel, and praying that said ship be condemned to pay the demands of said appellants with costs. That process issued out of said District Court having been served upon said ship, Edward and Robert Formby, claimants, on or about July 3d, 1855, by their proctor filed in said District Court their answer to said libel, praying that the said libel be dismissed with their costs in that behalf, as by reference to said libel and said answer will more fully appear. That said cause came on to be tried before the Honorable Ogden Hoffmann, Junior, Judge of said District Court, on or about the 21st, 22d, and 23d days of November,

1855, upon the pleading and the testimony and proofs adduced by the respective parties. And the said Judge having advised thereon on the 10th day of January, 1856, made a decree or sentence in said cause, whereby it was sentenced and decreed that the libel of these appellants herein be dismissed with costs.

And these appellants are advised and insist that the said decree is erroneous, inasmuch as they were and are entitled to recover the amount claimed in their said libel of said ship, or if not the whole amount of their claim that they were and are entitled to recover the greater portion thereof.

And these appellants, for these and other reasons, appeal from the whole of said decree to the next Circuit Court to be held in said District, and on said appeal they seek a new decision of the facts of the case, and intend to have said cause heard anew in the Circuit Court on the pleadings in the District Court, and upon proofs and testimony to be introduced anew in said Circuit Court. And appellants pray that said decree and every part thereof be reversed with costs, and that such other decree be thereupon made as to said Circuit Court shall seem just; and that said appellees be condemned to pay these appellants their costs and damages in the premises.

MANCHESTER & HODGES,
Proctors for Appellants.

San Francisco, January 28, 1856.

Service of a copy of within appeal is hereby admitted. January 28, 1856.

SAUNDERS & HEPBURN,
Proct's for Ship.

Endorsed: Filed January 28th, A. D. 1856.

JOHN A. MONROE,
Clerk.

Appeal Bond.

UNITED STATES OF AMERICA,
District Court of the United States
for the Northern District of California.

In Admiralty.

Stipulation entered into pursuant to the rules and practice of this Court.

Whereas, an appeal has been taken from the decree of this Court, made on the tenth day of January, in the year of our Lord one thousand eight hundred and fifty-six in a certain cause wherein Finlay McKinlay and Alexander Garrioch are libellants, against the Ship Pons Aelii and Robert and Edward Formby, claimants, by the said libellants. Now, therefore, the stipulators undersigned, hereby stipulate in the sum of fifteen hundred dollars, lawful money of the

United States of America, to pay all damages and all costs which shall be awarded against the said appellants by the final decree rendered by the Appellate Court in this action.

JOHN HANNA, [SEAL.]
OLIVER DEAN, [SEAL.]

Taken and acknowledged this 28th day of January, A. D. 1856, before me.

JOHN A. MONROE,
Cl'k U. S. Dist. Court.

NORTHERN DISTRICT OF CALIFORNIA, *ss:*

John Hanna and Oliver Dean being duly sworn, each for himself deposes and says, that he is a resident of said District, and is worth the sum of fifteen hundred dollars, over and above all his just debts and liabilities, exclusive of property exempt from execution.

JOHN HANNA,
OLIVER DEAN.

Sworn before me this 28th day of January, A. D. 1856.

JOHN A. MONROE,
U. S. Commissioner.

I assent to the sufficiency of the foregoing bond.

J. P. HAVEN,
Proctor for Appellees.

Endorsed: Filed January 28, 1856,

JOHN A. MONROE,
Clerk.

By W. H. CHEVERS,
Deputy.

Agreement for Transcript.

U. S. DISTRICT COURT,
Northern Dis. of Cal., ss:

In Admiralty.

F. MCKINLAY & A. GARRIOCH
vs.
THE SHIP PONS AELII, &c.

It is hereby stipulated and agreed between the above parties, that the transcript of the record to be certified by the Clerk of this Court to the Circuit Court on the appeal herein, shall consist of the pleadings of the parties, the depositions taken in the cause, the stipulations and bonds on appeal herein, and all agreements in writ-

ing relating to the cause; and also the decree of this Court, with the notice of intention to appeal, and the appeal herein.

MANCHESTER & HODGES,
Proctors for Libellants.

San Francisco, February 4th, 1856.

The above is agreed to on condition, that if any other paper, or document is wanted by either party, he is to have the right to use it.

H. P. HEPBURN,
for Claimants.

Endorsed: Filed February 5th, 1856.

JOHN A. MONROE,
Clerk.

by W. H. CHEVERS,
Deputy.

I, John A. Monroe, Clerk of the District Court of the United States of America for the Northern District of California, do hereby certify the foregoing pages from one to forty-five, inclusive, to be a transcript of the record of the said District Court in the cause named at the beginning hereof, made up pursuant to the fifty-third admiralty rule of December Term, 1854, of the Supreme Court of the United States of America.

In testimony whereof, I have hereunto set my hand and affixed the seal of the said Court, this thirteenth day of February, A. D. 1856, and of our Independence the eightieth.

[SEAL.] JOHN A. MONROE,
Clerk.

by W. H. CHEVERS,
Deputy.

And now at this day, that is to say, on the fourteenth day of February, A. D. 1856, came the said McKinlay, Garrioch & Co., by their proctors, Manchester & Hodges, and filed in this Court a certificate of the Clerk of the District Court aforesaid, in these words, that is to say:—

Certificate of Appeal.

UNITED STATES OF AMERICA,
Nor. Dis. of California, ss.

McKINLAY, GARRIOCH & Co., Appellants,
vs.
SHIP "PONS AELII."

I, John A. Monroe, Clerk of the District Court of the United States of America for the Northern District of California, do hereby certify, that an appeal has been taken from the final decree of the

said District Court made in the cause above mentioned, and that said appeal has been perfected and a transcript of the record duly certified.

Witness my hand and the seal of the said District Court, this 14th February, A. D. 1856.

[SEAL.] JOHN A. MONROE,
Clerk.

by W. H. CHEVERS,
Deputy.

Endorsed: February 14th, A. D. 1856.

GEO. PEN JOHNSTON,
Clerk.

And afterwards, to wit, on the 3d day of March, A. D. 1856, the following stipulation and order is placed in file in said cause, to wit:

Consent to take Proofs before G. P. Johnston.

U. S. CIRCUIT COURT,
Northern Dis. of Cal., ss.

In Admiralty.

F. McKINLAY & A. GARRIOCH, Appellants,
vs.
THE SHIP PONS AELII, &c., Appellee.

Consent to take proofs before Geo. P. Johnston, Esq., U. S. Commissioner.

It is hereby consented and agreed that the proofs to be used upon the hearing of this cause on appeal before said court be taken before George Pen Johnston, Esq'r., a commissioner duly appointed by said court in and for said district, at his rooms in the court house, in San Francisco, and that said proofs be taken upon the notice required in such cases by the admiralty rules of the Supreme Court of the United States, unless otherwise agreed by the parties hereto.

MANCHESTER & HODGES,
Proctors for Appellants.

H. P. HEPBURN,
for Ship.

San Francisco, March 3d, 1856.

It is ordered that the testimony to be used in the within cause on appeal before said court, be taken before Mr. Commissioner George Pen Johnston, agreeably to the terms of the within agreement.

M. HALL McALLISTER,
Judge, &c. &c.

San Francisco, March 4th, 1856.

Endorsed: Filed March 4th, A. D. 1856.

GEO. PEN JOHNSTON,
Clerk.

And afterwards, to wit, on the 6th day of October, A. D. 1856, the following order is placed on file in said cause, to wit:—

Order for C. McAllister to take Testimony.

U. S. CIRCUIT COURT,
for the Districts of California.

In Admiralty.

FINLAY MCKINLAY & ALEXANDER GARRIOCH, Appellants,
vs.
THE SHIP PONS AELII, Appellees.

It is hereby ordered that Cutler McAllister, Deputy Clerk, proceed to take the testimony herein, in place of George Pen Johnston, who is absent from the city, and the testimony thus taken to be used upon the hearing of this cause, the same as if taken by said Johnston.

M. HALL McALLISTER,
Judge, &c. &c.

Oct. 6th, 1856.

And afterwards, to wit, on the 29th day of December, A. D. 1856, the following stipulation is placed on file in said cause, to wit:—

Stipulation.

UNITED STATES CIRCUIT COURT.

MCKINLAY & GARRIOCH,
vs.
"PONS AELII."

It is consented that the testimony taken in the above cause before the Commissioner, be taken from the files of this Court.

H. P. HEPBURN,
J. B. MANCHESTER.

Dated San Francisco, Dec. 29, '56.

Endorsed: Filed December 29th, A. D. 1856.

GEO. PEN JOHNSTON,
Clerk.

And afterwards, to wit, on the 19th day of January, A. D. 1857, in the said September term, at the Court House in the City of San Francisco, in the District aforesaid, an order for hearing was duly

entered by the Judges of said Court in the words following, to wit:—

Order setting Time for Hearing.

At a stated term of the Circuit Court of the United States of America for the District of California, held at the Court House in the City of San Francisco, on Monday, the 19th day of January, in the year of our Lord one thousand eight hundred and fifty-seven.

Present: The Honorable M. Hall McAllister, Judge of said Court; Hon. Ogden Hoffman.

McKinley, Garrioch & Co.,
vs.
Ship Pons Aelii.

In Admiralty.

And now, at this day, by consent of proctors, it is ordered that this cause be set for hearing on Wednesday, the 21st day of January, A. D. 1857.

(Endorsed): Filed Jan'y 19, 1856.
GEO. PEN JOHNSTON,
Clerk.
By CUTLER McALLISTER,
Deputy.

And afterwards, to wit, on the 21st day of January, A. D. 1857, in the said September term, at the Court House in the City of San Francisco, came the parties to this suit by their respective proctors, and the cause having been argued before the Court is submitted on the following testimony, to wit:—

Deposition of Wm. Morrish, a witness produced on behalf of claimant.

U. S. District Court.

MacKinlay & Garrioch
vs.
The Bark Pons Aelii.

William Morrish sworn, says: I am master of the bark. Her tonnage is 467, and she belongs to Liverpool. We sailed the 26th Sept., '54, bound to Honolulu and then to San Francisco, with a full general cargo. She was safe, staunch, and strong when we left. We had a gale of wind a fortnight after leaving Liverpool, in the Bay of Biscay. The gale commenced S. S. E. and changed to S. S. W. a heavy gale, and found she was making water at the stern

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more than usual. Reduced sail as the gale increased, and finally hove to for 10 or 12 hours. We had made very little water before, a spell every 24 hours. She made so much water at the stern that we had to keep the pumps going every half hour. She laid to very well and shipped very little water. She rolled and labored very much. The sea was a cross and confused sea. We commenced as soon as the gale lulled to throw overboard some slate which was under the decks. Threw overboard from 30 to 35 tons in order to lighten her stern. I discovered the leak from looking through the lazarette. After lightening her she made but very little water, a spell every two hours. Couldn't see any other leak outside. There was less sea and wind when we were throwing overboard the slate. No water to speak of came on board during the time of discharging the slate. From that time had no gales till we got to Cape Horn, and then we had a succession of gales for six weeks. During one of the gales a heavy sea struck her and broke her tiller, smashed her jib-boom, and drew the ring bolts from the deck. We shipped a great many seas during those gales, and layed to a great portion of the time. The vessel rolled very heavily, the seas were frightful. About the latter part of February we had favorable weather, and we went to Valparaiso for water. We examined the vessel and found in the seam of the rudder case a space of a foot and a half in length open as if the stern-post had been twisted. We stopped that leak and repaired her tiller. We went to Valparaiso chiefly for water, and, while there, repaired. Went from thence, 28 Feb'y, to Honolulu, and there discharged a part of the cargo. Discharged about 400 tons. Has 4,220 cases of soap on board. It was stowed chiefly in the afterhold under the cabin. We moved about 300 boxes to get out the Honolulu cargo. Looked as if they had sweated. The nails were loose. The boxes were all discolored. The boxes I should consider in good order. We restowed the boxes in the afterhold. Remained in Honolulu 24 days. We caulked her top, sides, and water ways. We had fine weather all the way from Valparaiso to this port. Arrived here June 7th. She leaked a spell every 12 hours. We discharged here at Flint's wharf. The cargo was in fair condition. The boxes of soap were much discolored, and many of them loose, which we repaired as we put ashore. The nails in the boxes were rusty, a great many of them. Some were broken. It is from three to three and one-half years since she was rebuilt.

WILLIAM MORRISH.

Despoition of W. H. Moore, a witness produced on behalf of Claimant.

William Henry Moore being duly sworn, deposes and says: I am first mate of the vessel. I have heard the testimony of the Capt. Wm. Morrish, and know it to be correct in all respects.

WM. H. MOORE.

Deposition of Thos. Ritchie, a witness produced on behalf of Claimant.

Thomas Ritchie, sworn, says: I am the carpenter of the vessel. I have heard the foregoing testimony, and know it to be correct in all respects. I have been at sea in all about 11 years. The Pons Aelii was in good order when we left Liverpool. I repaired the leak at Valparaiso, think it was occasioned by the straining of the vessel in heavy seas.

THOMAS RITCHIE.

UNITED STATES OF AMERICA,
Northern District of California, ss.

I, John A. Monroe, a commissioner duly appointed by the District Court of the United states for the Northern District of California, under and by virtue of the Acts of Congress, entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the Courts of the United States," passed Febuary 20, 1812, and the act of Congress entitled "An act in addition to an act entitled 'An act for the more convenient taking of affidavits and bail in civil causes depending in the Courts of the United states,'" passed March 1st, 1817; and the act entitled "An act to establish the Judicial Courts of the United States," passed September 21st, 1789, do hereby certify, that the reason for taking the foregoing deposition is, and the fact is the witnesses were material and necessary in the cause in the caption of the said deposition named, and that the said depositions were taken by consent.

I further certify that on the 21st day of August, in the year of our Lord one thousand eight hundred and fifty-five, I was attended by the Proctor for Libellants and the Proctor for Claimants, and by the witnesses who were of sound mind, and lawful age, and the witnesses were by me first carefully examined, and cautioned, and sworn, to testify the truth, the whole truth, and nothing but the truth, and the depositions were by me reduced to writing in the presence of the witnesses, and from their statements, and after carefully reading the same to the witnesses, they subscribed the same in my presence. I have retained the said depositions in my own possession for the purpose of delivering the same with my own hand to the Court for which the same were taken. And I do further certify, that I am not of counsel nor attorney for either of the parties in the said depositions and caption named, nor in any way interested in the event of the cause named in the said caption.

In testimony whereof, I have hereunto set my hand and seal, this 21st day of August, in the year of our Lord one thousand eight

hundred and fifty-five, and of the independence of the United States the eightieth.

JOHN A. MONROE,
United States Commissioner, duly appointed by the District Court of the United States, for the Northern District of California.

Endorsed: Filed the 21st day of August, 1855.
JOHN A. MONROE,
Clerk.
By W. H. CHEVERS,
Deputy.

Deposition of William Broadhurst.

UNITED STATES CIRCUIT COURT,
for the Districts of California.

SAN FRANCISCO, CAL'A, *July 15th*, A. D. 1856.

On this day before me, Geo. Pen Johnston, a commissioner of the United States, for the Districts of California, duly authorized to administer oaths, &c. &c., came William Broadhurst, a witness produced on behalf of the appellants in the following case, viz: McKinlay, Garrioch & Co. *vs.* Ship "Pons Aelii, &c., and was duly sworn, and testified as follows:—

Present, J. B. Manchester, Esqr., on behalf of the appellant, and Saunders and Hepburn on behalf of appellee.

Questions by Proctor for Appellants.

Ques. 1. "What is your occupation, and how long have you been engaged in it?"

Ans. 1. "I am now the clerk and salesman of McKinlay, Garrioch & Co.; my occupation is that of salesman in general merchandising. I have been so engaged since 1838, as clerk, &c., brought up in a store, &c."

Ques. 2. Are you acquainted with Finlay McKinlay and Alexander Garrioch, the appellants, and do you know the ship "Pons Aelii?

Ans. 2. I am acquainted with Finlay McKinlay and Alexander Garrioch, and I am in their employ, and have been since January, 1852. "I know the ship."

Ques. 3. What time did the ship "Pons Aelii" arrive in this port, and had she any goods on board consigned to the appellants?

Ans. 3. She arrived on the 7th of June, 1855 (from Liverpool, I believe), and she had some soap belonging to the appellants on board. She had 40 boxes of "Castile soap," each weighing, or marked, 100 lbs., eighty boxes ditto, marked 50 lbs. each, both lots marked M. G., 200 boxes of white soap, each 50 lbs, as marked, and also marked

M. G.; there was also on board 100 boxes of yellow soap, also marked 100 lbs. each; also 200 boxes of yellow soap, 60 lbs. each, 600 boxes, 40 lbs. each, 3000 boxes, 20 lbs. each, all marked M. G. & Co., in all amounting to 3900 boxes of yellow soap.

Ques. 4. Are you acquainted with the price of soap in this market, and were you so acquainted on the 7th of June, 1855, and if so, state the value of the soap in question?

Ans. 4. We have been in the habit of selling soap for a long time, and I have done almost all the selling. The value of the Castile soap was at that time 10½ cents per pound, and its total value would have amounted to 840 dollars. The white soap at that time was worth ten cents per pound, and would have amounted to in value to $1,000 dollars. The yellow soap was worth from 7 to 7¼ cents, and amounted in value to $7,685 dollars. The whole invoice amounting to $9,525 00 dollars.

Ques. 5. What firm in Liverpool consigned this soap to appellants?

Ans. 5. M. Steele & Sons.

Ques. 6. What advances did the appellants make on this soap?

Ans. 6. There was advanced £950 lbs. sterling on the soap "by appellants."

Ques. 7. After the arrival in this port of the ship "Pons Aelii," did you go on board said ship to examine the soap in controversy? and if so, state the condition you found it in.

Ans. 7. I did, and I found the soap in very bad condition. I went on board the vessel immediately upon her arrival at the wharf, and after her hatches had been taken off I went below and examined the soap very carefully. I found the soap stowed aft the main hatch, piled up all together. The condition of the soap was bad, damaged by water, according to my judgment. The boxes, many of them were broken, and in some instances the soap strewed about the hold of the ship. I selected two of the best boxes I could find, and sent them up to Messrs. J. H. Coghill & Co., to whom I had sold a portion to arrive, when, upon their examining the sample, they refused the sale in consequence of the damage.

WM. BROADHURST.

Sworn to and subscribed before me this 15th day of July, 1856.

GEO. PEN JOHNSTON,
U. S. Commissioner.

Examination adjourned until to-morrow, July 16th, A. D. 1856, at 2 o'clock P. M.

GEO. PEN JOHNSTON,
U. S. Commissioner.

SAN FRANCISCO, CAL., *July 16th*, 1856.

Examination of Wm. Broadhurst, a witness produced on behalf of the appellants in this cause, this day resumed.

Direct examination continued.

Questions by Proctor for Appellants.

Ques. 8. How often did you examine the soap before it was discharged from the ship, and who, if any one, went with you to the ship to examine it also before it was discharged?

Ans. 8. I examined the soap four times before it was discharged from the ship. The first time I examined it by myself, the second time I was accompanied by James H. Wallace, the third time by Wm. M. Coghill, Mr. Washburn, of the firm of Washburn & Co., Mr. M. B. Carpenter, of the firm of M. Y. Hallock & Co., Capt. Boyé, and I believe Mr. Garrioch; on the fourth occasion I went down with Capt. Boyé.

Ques. 9. How many boxes, as it lay piled up in the hold of the ship, were visible to the naked eye, and what was the appearance of these boxes, and how was the soap stowed on board said ship?

Ans. 9. As the soap lay piled up in the hold of the ship, I should judge there were five or six hundred visible to the naked eye; the boxes were very much discolored; they were wet, many of them broken, the soap in many instances out of the boxes. The soap was stowed altogether by itself; it was stowed from the run up to a level with and a little above between decks. It was stowed together, but as they were not stowed up to the main deck so as to be chocked, they of course were loose, and there was nothing to prevent the boxes from working and shifting about, except their intrinsic weight.

Ques. 10. Are you acquainted with the manner in which cargoes are usually stowed on board of ships? and if so, state whether this soap was properly stowed.

Ans. 10. I am acquainted with the manner in which cargoes are usually stowed on board of ships. I have seen many vessels discharged in this port with soap on board, but never saw the soap piled together in the manner it was on board the "Pons Aelii." According to my judgment, the soap was not properly stowed.

Ques. 11. Did you examine while at the ship the condition of her decks? and if so, state the condition.

Ans. 11. I did examine the condition of her decks. The decks of the ship were leaky. The portion of the decks directly over the soap were open, and at the particular time I was looking at it water was then coming through and falling on the soap.

Ques. 12. With the exception of the broken boxes, how, in your judgment, from the examination you had of the soap and of the ship, did the soap become damaged?

Ans. 12. In my judgment, the soap was damaged by water, and I should think the water got to the soap through the decks.

Ques. 13. Were you present at the time this soap was discharged from the ship, and if so, state whether you examined the whole of it, its condition, and how many boxes you found broken?

Ans. 13. I was present the greater part of the time while the soap was being discharged from the ship. I examined the greater part

of it, but not the whole of it; its condition was very bad indeed—very much discolored and wet; after the soap was taken to Flint's warehouse, directly opposite the ship, I counted about two hundred broken boxes.

Ques. 14. After the soap was in the warehouse, did you take any one to examine it, and if so, whom?

Ans. 14. I took a gentleman by the name of S. L. Jones, an auctioneer, to examine the soap, and we did examine it together immediately after it was stored; some time after that I went down to the warehouse with a gentleman by the name of McCulloch, a practical chemist, and he carefully examined the soap. I gave him samples of each quality of soap to analyze, and retained duplicates of the samples myself, which I have now in my possession. (Here the witness produces the samples of soap referred to, and they are left to be connected with this deposition, and are marked Exhibits Nos. 1, 2, 3, 4, 5, 6 and 7.)

Quest. 15. State the character and quality of the packages containing this soap, and if you are acquainted with the boxes usually used in putting up English soap, and if so, how do these boxes correspond with those usually used in putting up English soap?

Ans. 15. The packages containing the soap were the same as are usually used in putting up English soap; they were originally good boxes; before this shipment boxes of the same character containing reached us in good condition, so that I had no difficulty in selling them; antecedent to this shipment we have had five or six thousand boxes to arrive of a similar character, and generally in good condition, and the soap we have received has invariably been put up in the same kind of packages.

Ques. 16. After the arrival of the soap, did you cause any of it to be weighed, and if so, how did it correspond with the weight marked upon the boxes?

Ans. 16. I did; I weighed about twenty boxes of each kind, and the soap turned out full weight. There had been no evaporation in this soap at the time I weighed it.

Ques. 17. Are you acquainted with soap as an article of merchandise, and if so, state whether, in your judgment, the damage to this soap could have arisen from anything inherent in the articles itself. (Question objected to.)

Ans. 17. I am; I have sold soap in large quantities for four years. We have received large quantities of the same kind of soap from the same manufacturers, and it has always arrived in good order. In my opinion, the damage to this soap could not have arisen from anything in its composition. I found the bars, in many of the boxes, decayed at one end, while the other end was perfect, which is conclusive proof to my mind that the damage was by water.

Ques. 18. Did McKinlay, Garrioch & Co. refuse to receive the soap on account of its bad condition?

Ans. 18. They did.

Ques. 19. From the different examinations and surveys you made of this soap, what, in your judgment, is the damage it has sustained?

Ans. 19. I should think the damage to the soap 50 per cent. I mean the mercantile damage. This, in my judgment, would be about the damage, take it all together. It would not sell for more than one-half what it would were it in good order. This is my judgment. I estimate the damage from being a salesman of soap.

Cross-examined by Appellees' Proctor.

Ques. 20. Who is the owner of the soap in question?

Ans. 20. In answer to that I can only state this, that the soap is consigned by M. Steele & Son of Liverpool, as per invoice, to the appellants, and that the appellants have made large advances upon it, as I have before stated.

Ques. 21. When were these advances made?

Ans. 21. The advances were made some time about November, 1854.

WM. BROADHURST.

Sworn to and subscribed before me, this 16th day of July, A. D. 1856.

GEO. PEN JOHNSTON.
U. S. Commissioner.

Examination adjourned until to-morrow, July 17th, A. D. 1856.

GEO. PEN JOHNSTON,
U. S. Commissioner.

Deposition of J. H. Wallace.

SAN FRANCISCO, CAL., *July 17th*, 1856.

On this day before me, a Commissioner appointed, &c., as aforesaid, came James H. Wallace, a witness produced in behalf of the libellants aforesaid, in the foregoing cause, who being duly sworn, deposes and says as follows, viz:

Questions by the Proctor for the Libellants.

Ques. 1. What is your business, and are you acquainted with the appellants Finlay McKinlay and Alexander Garrioch, and the ship "Pons Aelii?"

Ans. 1. I was employed as the clerk of Finlay McKinlay and Alexander Garrioch at one time, and know the ship Pons Aelii; she arrived in this port in June, 1855.

Ques. 2. Had the appellants any goods on board said vessel, and if so, did you visit said ship soon after her arrival, and examined said goods?

Ans. 2. They had a large quantity of soap on board. I went down when the ship got to the wharf with Mr. Broadhurst, to examine said soap.

Ques. 3. State where the soap was stowed on board said ship, how stowed, and its condition?

Ans. 3. The bulk of the soap was stowed aft of the mainmast, in the stern of the ship, and it was stowed in a square body, as near as the form of the ship would allow. It was stowed about 12 boxes deep. I have been five years in this port, constantly engaged amongst vessels, and, of course, have seen how cargoes are stowed, and, from my knowledge gained in that way, I should say that the soap on the Pons Aelii was not well stowed—it was to much in a mass, and was so stowed that I think it would work and shift about—regard should be had in stowing to the nature of the goods to be stowed—and soap should not be stowed in so solid a bulk, but should be distributed more over the vessel in my judgment, it should not have been stowed more than half as deep; the condition was very bad of the soap, I searched over the whole of the upper surface of the soap, and could not find a good merchantable box to serve as a sample—from its appearance at the time, I thought it was wet with salt water, and all of it in sight seemed to be in a damaged condition.

Ques. 4. Were you present at the unlivery of this soap from the ship, and if so, state the condition you found the whole of it in when placed upon the wharf?

Ans. 4. I saw the bulk of it discharged from the ship—and examined it as it came out, there were two hundred or two hundred and fifty broken boxes, and in those boxes, or many of them, there were mixed up different kinds of soap, as if it had been taken up from some scattered bulk of the soap in the hold or elsewhere—the balance of the soap seemed to me to be damaged by salt water. I afterwards stowed or assisted to stow all of this soap in Flint's warehouse, and great numbers of them were much stained, some of course worse stained than others—at that time I thought the boxes had been stained by salt water, the reason I thought so was that the boxes were wet as stowed in the hold, when I first examined the surface of the piles.

Ques. 5. Did you assist Mr. Broadhurst to weigh any of this soap; and if so, how did you find the weight to correspond with the weight marked on the boxes?

Ans. 5. I assisted Mr. Broadhurst to weigh tallies of five or ten boxes of each kind, and we found a full box of soap weighed full weight.

Ques. 6. From your examination and inspection of this soap, as you have before stated, what in your judgment was the damage, in a mercantile point of view, the soap had sustained?

Ans. 6. I should say the soap had sustained a damage of forty per cent. on the whole of the consignment.

Cross-examination waived.

JAMES H. WALLACE.

Sworn to and subscribed before me this 17th day of July, 1856.

GEO. PEN JOHNSTON,
U. S. Commissioner.

Deposition of D. C. M Goodsell.

De Courcy M. Goodsell, a witness produced in behalf of the libellants in the foregoing cause, this 17th day of July, 1856, being duly sworn, deposes and says as follows, to wit:—

Direct Examination.

Questions by the Proctor for the Libellants.

Ques. 1. What is your occupation?

Ans. 1. I am a ship-wright, and it has been about seventeen years since I commenced learning my trade. For the last five years in this town I have carried on business for myself, or thereabouts, and I have been carrying on business of the same kind for myself since 1844.

Ques. 2. Were you requested by the appellants to examine the ship "Pons Aelii," in the month of June, 1855; and if so, did you examine her, or survey her?

Ans. 2. I was requested by the appellants to examine the ship "Pons Aellii," in the month of June, 1855, and I surveyed or examined her on the 19th day of June, 1855.

Ques. 3. State the condition you find the ship in.

Ans. 3. I found the poop deck lately caulked, 10 seams on larboard side, and 6 on starboard side, and 1 seam about half way on the starboard side to main deck. A portion of quick work inside on starboard side caulked. I should think that the water way seams, plankshore seams, and 1 or 2 seams inside to deck or main deck, looked as if the water had run down into the hold of the ship on both sides.

Ques. 4. How long, to the best of your judgment, had this caulking been done you speak of?

Ans. 4. It had been recently done, and in my opinion within a week.

Ques. 5. Can the decks of a vessel be caulked at sea?

Ans. 5. All the caulking I saw on this vessel could have been done at sea, in good weather.

Ques. 6. Did you go into the hold of the ship and examine the under part of the deck; and if so, state whether you saw any indications of the decks having leaked?

Ans. 6. I went into the hold of the ship, and examined the under part of the deck, and I saw indications of the decks having leaked in the wake of the seams I have been speaking of. These seams I speak of were forward and abaft of the mainmast. They looked as

if they had leaked all along, but more abaft than forward of the mainmast. The poop deck is abaft of the mainmast.

Cross-examination waived.

D. C. M. GOODSELL.

Sworn to and subscribed before me this 17th day of July, A. D. 1856.

GEO. PEN JOHNSTON,
U. S. Commissioner.

Examination adjourned until to-morrow the 10th day of July, A. D. 1856.

GEO. PEN JOHNSTON,
U. S. Commissioner.

SAN FRANCISCO CALA., *July 18th*, 1856.

The parties not being ready to proceed in this cause, the examination is adjourned until to-morrow the 19th day of July, A. D. 1856.

GEO. PEN JOHNSTON,
U. S. Commissioner.

Deposition of Jno. McCulloch.

SAN FRANCISCO, CALA., *July 19th*, 1856.

Examination in this cause of witnesses on behalf of the libellents, this day resumed, John McCulloch, a witness on behalf of the libellants, being duly sworn, deposes and says as follows, to wit:—

Direct Examination.

Questions by Proctor for Libellants.

Ques. 1. What is your business, and where do you reside?

Ans. 1. I am a practical chemist, and reside in the City of San Francisco.

Ques. 2. Were you ever called upon by McKinlay & Garrioch to analyze any soap; and if so, state from whom, and where you received the samples to analyze, and the result of the examination and analyzation of said soap?

Ans. 2. I was called upon by McKinlay & Garrioch to analyze some soap in January last, and accompanied Wm. Broadhurst, their clerk, to Flint's warehouse to get samples. I took eight samples as the average of from 20 to 30 cases which were open. The soap now here duplicates the samples that I obtained and examined. (The soap now shown the witness is the same spoken of as Exhibits in the deposition of Wm. Broadhurst, and accompanies that deposition. Geo. Pen Johnston, U. S. Commissioner.) I found the soap to be about a second class soap, but the materials were perfectly sound and well saponified; the tallow was sound, and the alkali, and therefore the saponification was well perfected, and the soap was as sound and good soap as could be; it differed from first class soap only in color; the

materials used in manufacturing it are as good as used in first class soap, differing only as I have said in color. The white soap contained 22 per cent. fatty constituents, with an excess of alkalies; the yellow is but a modification of the white, containing the same proportions of ingredients; the Castile soap contained 70 per cent. of fatty and resinous matters together, the usual composition of Castile soap.

Ques. 3. Is there anything in the composition of this soap, or anything inherent in the article itself, which would cause it to decay?

Ans. 3. Nothing whatever. I don't understand how the material of soap could be so affected as to decay; the only exhalation from soap would be water.

Ques. 4. While at Flint's warehouse did you examine the packages containing this soap; and if so, state the condition you found them in, and whether that condition could have resulted from the composition of the soap, or anything inherent in the article itself?

Ans. 4. I examined the boxes or packages containing the soap, and found them all more or less stained. I am of the opinion, from my knowledge of chemistry, that neither the composition of the soap nor anything inherent in it, could have produced the stains on the packages.

Ques. 5. Could these boxes have been stained as you saw them, by sweat?

Ans. 5. They could not; sweat is a mere evolution of water in a state of vapor.

Ques. 6. How, in your judgment, did these packages or boxes containing the soap become stained?

Ans. 6. By no internal, but by some external means; clear salt water would not stain, because it contains no coloring matter, but salt water from the decks, or any where else it could pick up coloring matter, would stain.

Ques. 7. Would the stains you saw be likely to be produced from water, salt or fresh, passing or falling upon the packages in the hold of a ship from leaks in the decks?

Ans. 7. Salt or fresh water falling upon the packages, if coloring matter or dirt was mixed with it, would stain them, but not otherwise.

Cross-examination.

Questions by Proctors for the Claimants and Appellees.

Ques. 8. Have you ever examined soap of the manufactory of Steele & Son before?

Ans. 8. I never have.

Ques. 9. What amount of water is proper to be used in the manufacture of the various kinds of soap of which you have spoken?

Ans. 9. No two manufacturers cleanse with the same proportion of water; they use it in proportions varying from 20 to 50 per cent.

Ques. 10. For the purpose of undergoing a long voyage—say from England to this country—would manufacturers cleanse the soap with a large or small proportion of water?

Ans. 10. I know nothing certainly about the course to be pursued for such a purpose, but as a matter of opinion should say, if the manufacturer sent it on his own account, he would cleanse the soap with a small proportion of water.

Ques. 11. Can you tell from your examination of this soap, what proportion of water was used in cleansing it?

Ans. 11. I cannot state what quantity of water was used in cleansing, but it contained but a small proportion of the water when I analyzed it.

JOHN McCULLOCH.

Sworn to and subscribed before me this 19th day of July, A. D. 1856.

GEO. PEN JOHNSTON,
U. S. Commissioner.

Deposition of S. L. Jones.

Examination continued this day of S. L. Jones, another witness produced on behalf of the libellants.

Direct Examination.

Questions by the Proctor for the Libell'ts and Appl'ts.

Ques. 1. What is your business, and were you at Flint's warehouse with Mr. Broadhurst, to examine the consignment of soap by the ship Pons Aelii," or any consignment of soap stored in that warehouse any time within the last eighteen months; and if so, state the condition you found the soap in?

Ans. 1. I am engaged in business as an auctioneer, and I expect I have sold more soap of the description now in controversy than any other man in San Francisco within the time specified (eighteen months). I did go to Flint's warehouse with Mr. Broadhurst, the clerk of the appellants in this cause, to examine a large consignment of soap, which I am pretty certain was the consignment of soap brought in the ship "Pons Aelii;" the soap appeared to be in a damaged condition. I took a sort of a general survey of the boxes, and the porter handed down some of the boxes, some fifteen or more, for me to inspect; the boxes were stained, and the lot was a damaged lot.

Ques. 2. From the examination and survey you had there, what would be the difference in a mercantile point of view, between the price of soap in good boxes or packages, and such packages as contained the soap you saw at the warehouse?

Ans. 2. I should think there would be a difference of between 33 and 40 per cent. I was selling soap of a similar character at auction

manufactured by the same men at 6½ and 6¾ cents; and I offered for the lot at the warehouse, white yellow, and castile taken together, 4⅛ cents per lb.

Ques. 3. How was this soap damaged in your opinion?

Ans. 3. I should think from the appearance of the soap, that the packages had been damaged by water.

Ques. 4. What condition has the soap manufactured by Steele & Son of the same kind and quality as that you saw at the warehouse generally arrived in at this port?

Ans. 4. I have sold a great deal of it in good condition, and some of it in bad; but I don't know how the soap is when it arrives, as it passes through the hands of consignees before it comes to me; the greater part of it I have sold was in good condition.

Cross-examination.

Questions by Proctor for Appellees and Claimants.

Ques. 5. Did you open any of the boxes and examine the soap, and if so, how much did you examine?

Ans. 5. Some ten, fifteen, or twenty boxes of the soap were opened in my presence; I examined the soap about as much as I would desire to do in making a purchase.

Ques. 6. What was the condition of the soap itself?

Ans. 6. Some of the bars were broken, and others seemed to have been affected by water; it was in a bad condition.

Ques. 7. Are you acquainted with the character of American soap, and if so, how does it compare with English soap in quality generally?

Ans. 7. American soap (Hill's, I mean), sells for two cents more, or thereabouts, than English soap.

S. L. JONES.

Sworn to and subscribed before me, this 19th day of July, A. D. 1856.

GEO. PEN JOHNSTON,
U. S. Commissioner.

Examination adjourned until Friday next, the 25th day of July, A. D. 1856, at 2 o'clock P. M.

GEO. PEN JOHNSTON,
U. S. Comm'r.

SAN FRANCISCO, CAL'A, *July 25th*, 1856.

The parties to the foregoing cause not being ready to proceed with the examination. Examination adjourned until to-morrow, July 26th, 1856, at 2 o'clock P. M.

GEO. PEN JOHNSTON,
U. S. Commissioner.

Deposition of O. P. Sutton.

SAN FRANCISCO, CAL'A, *July 26th*, 1856.

On this day examination of witnesses produced on behalf of the appellants resumed.

O. P. Sutton, a witness produced on behalf of appellants being duly sworn, deposes, and says as follows, viz:—

Respective proctors present.

Questions by the Proctor for Appellants.

Ques. 1. What is your business, and how long have you been engaged in that business, and what business were you engaged in before you commenced your present business?

Ans. 1. I am U. S. Appraiser at this port; I have been so engaged a little more than three years; before I was appraiser I was a merchant.

Ques. 2. State whether you were called upon in the month of July, 1855, to appraise the damages upon a quantity of soap stored in Flint's warehouse, which arrived here on board the ship "Pons Ælii," consigned to McKinlay, Garrioch & Co., and if so, state the condition you found the soap in, and the damaged it had sustained.

Ans. 2. I was employed to make the appraisement mentioned, and made such appraisement. I found it generally damaged; 401 boxes of castile soap marked M. G. & Co., were damaged ten per cent.; 80 boxes marked in the same way were damaged ten per cent. castile soap also; 200 boxes of white soap, marked [M. G.] were damaged 20 per cent., and three thousand nine hundred boxes of yellow soap, marked M. G. & Co., were damaged twenty-five per cent. I made the appraisement as a sworn officer of the Government.

Ques. 3. State if you made a thorough examination of the soap at the time, and if so, how many boxes did you have opened for inspection? State also, whether you estimated the actual or mercantile damage to the soap, and what would be the difference between the actual and mercantile damage in your estimation?

Ans. 3. I made a thorough examination of the soap; I think I had as many as fifty or sixty boxes opened. I estimated the actual damage. I think the difference between the actual and damage amounted to from five to ten per cent., the mercantile damage being greatest.

Ques. 4. State the condition you found the packages and the soap in, and the cause of the damage in your judgment.

Ans. 4. As I said before, it was generally damaged—the packages stained—the soap was broken and some of it wasted. The injury to the packages and soap was occasioned, in my opinion, by water reaching the soap, and by sweating of the vessel.

O. P. SUTTON.

Sworn to and subscribed before me, this 26th day of July, A. D. 1856.

GEO. PEN JOHNSTON,
U. S. Commissioner.

Examination adjourned until Monday next, July 28th, A. D. 1856, at 2 o'clock P. M.

GEO. PEN JOHNSTON,
U. S. Commissioner.

SAN FRANCISCO, CAL'A, July 28th, 1856.

The examination in the foregoing case this day adjourned until Wednesday, the 6th day of August, A. D. 1856.

GEO. PEN JOHNSTON,
U. S. Commissioner.

SAN FRANCISCO, CAL'A, August 6th, 1856.

The examination in the foregoing cause this day adjourned until Thursday, the 7th day of August, A. D. 1856.

GEO. PEN JOHNSTON,
U. S. Commissioner.

SAN FRANCISCO, CAL'A, *August 7th*, 1856.

The examination in the foregoing cause this day adjourned until to-morrow the 8th day of August, A. D. 1856.

GEO. PEN JOHNSTON,
U. S. Commissioner.

Deposition of Robert Roxby.

SAN FRANCISCO, CAL'A, *August 8th*, 1856.

The examination in the foregoing cause this day resumed. Robert Roxby, a witness produced on behalf of the appellee, being duly sworn, deposes and says as follows, viz:—

Questions by the Proctor for the Appellees.

Ques. 1. Have you been a nautical man, and how long?

Ans. 1. I have commanded a ship ever since the year 1826.

Ques. 2. What is your present occupation?

Ans. 2. I am a surveyor for Lloyds and surveyor for the Hamburg underwriters, and have been employed as a surveyor for Lloyds for three years past in this city.

Ques. 3. Did you visit the ship "Pons Aelii" in the month of June, 1855, and if so, for what purpose?

Ans. 3. On the 19th of June, 1855, I was requested by Joseph De Puisaye Green, Lloyd's agent, to hold a survey of the soap on board the ship "Pons Aelii. She was a vessel classed A 1, at Lloyds; was a strong good ship.

Ques. 4. How was the soap stowed?

Ans. 4. Nearly the whole of the soap was stowed in the after hold, under the cabin deck.

Ques. 5. Was it well or ill-stowed?

Ans. 5. It had been re-stowed; it was evidently not stowed in the same place where it had been stowed originally—part of it, I mean.

Ques. 6. What was the condition of the soap?

Ans. 6. The boxes were generally much discolored. I saw two boxes broken, and several with their nails started; we examined several boxes marked M. G. and found the bars of soap mouldy and discolored; we opened about ten boxes of each kind, the mould and discolorment was apparently caused by sweat. I examined a number of boxes marked M. G. & Co., of twenty-five pounds each, and found the soap mostly in good order. I found the inferior soap by far the most mouldy, and the best soap was the least so.

Ques. 7. What was the cause of the discoloration and the mould on the soap?

Ans. 7. The soap had been striped very queer, and the moisture had saturated the wood, and the damp arising from the soap had caused the mould.

Ques. 8. What sort of boxes was the soap stowed in?

(The proctor for the appellant objects to the foregoing question.)

Ans. 8. The boxes were slight. The wood was either Scotch birch or American spruce pine.

Ques. 9. What effect, if any, had the moisture of the soap on the wood and fastenings of the boxes?

Ans. 9. The moisture from the soap would naturally corrode the iron nails, and the box would be liable to fall to pieces. I mean that it would weaken the fastenings.

Ques. 10. Did you examine the decks and sides of the ship?

Ans. 10. I was not called upon to survey the ship, and did not take particular notice of the deck and sides.

Ques. 11. Did you see any traces, and what traces of salt water?

Ans. 11. I saw three slight leaks under the cabin deck, and one of the hold beam fastenings under the after hatch leaked on the port side. I do not think there was any injury done to the cargo from these slight leaks under the cabin deck; from the fastening of the hold-beam I think the soap would have received damage from salt water.

Ques. 12. Could the injury from the hold beam have been repaired on the voyage?

Ans. 12. No, sir.

Ques. 13. Describe the manner in which the cargo was protected overhead.

Ans. 13. There was an upper deck, the cabin deck, and an oil skin over the cabin deck.

Ques. 14. Did you see any traces of the recorking of the ship?

Ans. 14. I did not observe any.

Ques. 15. If there had been any recorking, in your judgment as a nautical man, could you tell the date of the recorking?

Ans. 15. No, sir; but would know that it was recent corking, but could not tell the date.

Ques. 16. Have you surveyed ships containing English soap in this port, and particularly the soap manufactured by Mathew Steele & Son? and if so, what condition does it generally arrive?

Ans. 16. I have seen several ships discharging this soap, and have always found many boxes much discolored. Some boxes equally in the same condition as from the "Pons Aelii."

Ques. 17. How does the condition in which English soap arrives compare with that in which American soap arrives?

(Question objected to.)

Ans. 17. As a general rule the American soap is in much better order, in consequence of the packages being stronger.

Ques. 18. Supposing soap to be shipped green at Liverpool, what effect would the length of the voyage have upon it?

(Question objected to.)

Ans. 18. The length of the voyage would increase the mould.

Cross-examination.

Questions by the Proctor for the Appellant.

Ques. 1. How many boxes, in all, of this soap did you open and examine? and how much did you find mouldy?

Ans. 1. We opened about thirty boxes, and out of these boxes there were more that were moulded than that were not.

Ques. 2. How many boxes in all did you see at the time you surveyed the soap?

Ans. 2. I suppose from two to three hundred.

Ques. 3. State if the boxes you saw were discolored.

Ans. 3. All the that I saw were discolored.

Ques. 4. What caused that discoloration?

Ans. 4. I suppose the sweat of the ship and the length of the voyage.

Ques. 5. What other cargo was the ship laden with? and in what part of the ship did you find the other portion of the cargo stowed?

Ans. 5. In the forehold coals in bulk, abaft the coals salt in sacks. I think the next was crockery. And I think there was about the main hatch.

Ques. 6. What would cause the sweat of the ship?

Ans. 6. General cargoes all sweat more or less.

Ques. 7. Did you see among the boxes you examined, or had a view of while surveying said soap, any that appeared to be damaged by salt water?

Ans. 7. I saw several that were evidently damaged by salt water.

Quest. 8. Did you go there to survey this ship, and did you survey this ship?

Ans. 8. I did not go there to survey the ship, and did not survey the ship.

Quest. 9. Are you a manufacturer of soap, or are you acquainted with the manufacture of it?

Ans. 9. I am not a manufacturer of soap, and am not acquainted with its manufacture.

Ques. 10. Are you a shipwright?

Ans. 10. No.

ROBERT ROXBY.

Sworn to and subscribed before me, this 8th day of August, A. D. 1856.

GEO. PEN JOHNSTON,
U. S. Commissioner.

Deposition of J. Y. Nicholson.

John Y. Nicholson, witness for appellees being duly sworn, deposes and says, as follows:

Direct Examination.

I have thirty-five years experience as a nautical man; I was invited by Capt. Noyes to visit the ship Pons Aelii in the month of June, 1855, to examine some soap. I went into the hold and opened some ten or fifteen boxes and Mess. McKinlay & Garrioch's clerk was there, he opened some, and some broken that I examined, some twenty-five or thirty boxes in all. The boxes were very weak; the fastenings were corroded from the alkali of the soap; were not what I should call merchantable boxes (last part of the answer objected to). The condition of the soap was mouldy, caused by dampness of the atmosphere in the hold, what is called sweat. You may be satisfied that it was not caused by salt water, as salt water will never leave any trace of mould—sweat will—I saw some few boxes stained with salt water. I judge it was salt water from the dark stain on the boxes. I did not observe any difference in the soap I examined. I saw no Castseel, the boxes were all stained alike by the alkali. I turned many of them over for the purpose of examining them and did not see one that was not stained. I found two or three places under the cabin decks "weeps" (not leaks), where it had dropped down leaving a little trace. On the port side about the main hatch way there was but a slight indication of salt water, nothing to damage this soap to the extent it was damaged. I never saw a worse case of sweat in my life. I examined the seams of the deck below with my knife, and found that they were hard. It is impossible for a man to tell after two or three weeks whether a vessel deck is newly corked without trying the seams.

Ques. 1. How was the cargo stowed?

Ans. 1. The boxes of soap appeared to me to be restowed, some of

them. I do not think it was the original stowage, the upper part of them; there was a great number of them in sight, and the cargo seemed to be very well stowed.

Ques. 2. If the decks had been newly corked in port, and had been opened during the voyage so as to admit considerable quantities of salt water, would the effects of it have been visible?

Ans. 2. Evidently so.

Ques. 3. What in such a case would have been the appearance of the boxes?

Ans. 3. They would have been stained all over with a dark stain, wherever the salt water came in contact with them.

Ques. 4. Would the appearance have been materially different from that which they presented?

Ans. 4. Quite so. The stain of alkali and the stain of salt water is very different.

Ques. 5. Where in your opinion was the leak through which entered the salt water which injured the boxes bearing the marks of salt water?

Ans. 5. Under the cabin deck and on the port side a little abaft the main mast, and on the starboard side also, and in the water way seams.

Ques. 6. How many boxes were injured from the weeps in the cabin deck?

Ans. 6. Ten, twelve, or fifteen boxes.

Quest. 7. To what extent were they injured?

Ans. 7. The soap was not injured, the boxes merely stained.

JOHN Y. NICHOLSON.

Sworn to and subscribed before me this 8th day of August, A. D. 1856.

GEO. PEN JOHNSTON,
U. S. Commissioner.

Examination adjourned until Tuesday next, the 12th day of August, 1856, at 2 o'clock P. M.

GEO. PEN JOHNSTON,
U. S. Commissioner.

August 12th, examination adjourned until December 9th, 1856.

GEO. PEN JOHNSTON,
U. S. Commissoner.

Examination resumed Tuesday the 9th Dec'r, 1856.

Proctors for respective parties present.

Examination of John Y. Nicholson continued.

Ques. 1. Was the soap well stowed as you saw it on board?

Ans. 1. A portion of the soap was well stowed; a few boxes on top, which had been broken out from the stowage, were moved and handled about.

Ques. 2. How many boxes of that you examined were broken, as near as you can now recollect ?

Ans. 2. Not more than ten or twelve of the boxes I looked at were broken.

Ques. 3. Were all the boxes you looked at in a damaged condition ?

Ans. 3. Every box I saw was in a damaged condition ; there was not a merchantable box among them ; they were all more or less stained.

Ques. 4. How deep were the boxes stowed in the hold of the ship as you saw them ?

Ans. 4. About five, six, or seven feet, as I saw them, as well as my memory serves me.

Ques. 5. Should boxes of the description of those containing this soap be stowed as deep as those were stowed on board of that ship ?

Ans. 5. There would have been no injury done to the boxes had not the contents weakened them by rust materially.

Ques. 6. You have spoken in your direct examination that the boxes appeared to be stained by alkalies contained in the soap itself ; would alkalies which the soap contained stain the outside of the boxes ?

Ans. 6. The boxes were stained there and there with a greenish greast of some kind ; whether it was alkali or not I do not know ; I am no chemist.

Ques. 7. Are you a manufacturer of soap, or are you acquainted with the manner of manufacturing it and the ingredients used for that purpose ?

Ans. 7. I am no manufacturer of soap. I believe the ingredients are grease, ley, pearlash, and salt. In England, I believe they use a great deal of palm oil.

Ques. 8. Does dampness produce mould in the hold of a ship ?

Ans. 8. Dampness from sweat will produce mould, but dampness from salt water will not, as far as my experience goes.

Ques. 9. How are the holds of ships ventilated ?

Ans. 9. Some ships' holds are not ventilated at all. I have seen ships' holds ventilated by a grating in the forecastle bulkhead ; some ships have large iron, copper, or brass ventilators.

JOHN Y. NICHOLSON.

Sworn to and subscribed before me, a special commissioner appointed by the Court, this 9th December, 1856.

CUTLER McALLISTER,
Special Commissioner.

Deposition of Amos Noyes.

Capt. Amos Noyes sworn as witness on behalf of the respondents and appellees.

Questions by H. P. Hepburn, Esq., Proctor for Respondent and Appellees.

Direct Examination.

I surveyed the cargo of the ship Pons Aelii; the first survey I made as Port Warden, at the request of the commander of the ship, on the 12 June, 1855. I was there at the opening of the hatches. The first survey I made on the 12th June, 1855, I surveyed the hatches, and found them well secured, and the cargo in good order as far as I could see. I did not examine the soap on the first survey. On Monday, the 14th June, 1855, I surveyed in the hold, and found a large quantity of soap in boxes, marked M. G. & Co. M. G. & Co. & M. G.; nearly all of it very much in the same condition, and having the same appearance—the boxes being stained, and the nails rusty.

Ques. 1. Be good enough to state what in your judgment as an expert was the cause of the condition of the boxes, as you have described them.

Ans. 1. It was my opinion that they were stained by their own contents.

(Question objected to by Proctor for libellants.)

Ques. 2. How did you find the soap stowed?

Ans. 2. In the after part of the ship abaft the after hatch. It was all stowed together, and well stowed.

Ques. 3. Be good enough to state if you examined the condition of the seams of the ship's decks for leaks, and what was their condition?

Ans. 3. I did, and could find no leaks over or above where the soap was stowed that I could discover.

Ques. 4. Be good enough to state if there was any injury to these boxes traceable to salt water, and if so, to what extent?

Ans. 4. I don't think there was any of them damaged by salt water, possibly there might have been a few.

Ques. 5. What sort of boxes were these?

(Objected to by proctor for libellants.)

Ans. 5. Most of them were small boxes, slightly made of thin stuff.

Ques. 6. Did you see any traces of those decks being recently caulked?

Ans. 6. I did not.

Ques. 7. If they had been recaulked after the arrival of the ship in this port, would have observed it?

Ans. 7. I think I should.

Ques. 8. Was the soap all of kind, or were there several kinds?

Ans. 8. Nearly all of it were of the same kind, and in small boxes; there was a few hundred boxes of different quality in boxes of larger size and better quality of soap.

Ques. 9. Be good enough to state how the better quality of soap

in the larger boxes compared in condition with the inferior quality of soap in the smaller boxes.

Ans. 9. They were not quite so much stained.

Ques. 10. If the injury to this soap had been caused by salt water, how would it have affected the appearance of the boxes?

Ans. 10. They would have been streaked and spotted, and darker under the leaks if there had been any leaks.

Ques. 11. Where there was no leaks, what would have been the condition of the boxes?

Ans. 11. They would have been in good order.

Ques. 12. Did you see any signs that this soap had been restowed on the voyage?

Ans. 12. I did not notice that there had been.

Ques. 13. If it had been restowed, would it have done good or harm to the soap?

Ans. 13. It would not have hurt it any, it would have done it benefit to give it air.

Ques. 14. Did you open some of these boxes?

Ans. 14. I saw several opened on the 14 June.

Ques. 15. What was the condition of the soap of those that you saw opened?

Ans. 15. In the small boxes the soap was soft, and appeared to be new or green, in the larger boxes it was better.

Ques. 16. From the condition in which you found these boxes, could the cargo be taken out without more or less damage to the boxes?

Ans. 16. They could not handle them without breaking some of them.

Cross-examined.

Questions by Manchester and Hodges, Proctors for Libellants.

Ques. 1. Are you a manufacturer of soap, and if not, do you know of your own knowledge the ingredients used in manufacturing it?

Ans. 1. I am not a manufacturer of soap, but I have seen a good deal of soap in my day; but I know nothing about making it.

Ques. 2. Was a great many of the boxes broken?

Ans. 2. On the first examination on the 14 June, I did not notice any of them broken, we opened several boxes. I saw the soap more than ten times afterwards. Afterwards I saw them passing the boxes of soap out, and several of them fell to pieces in passing them out.

Ques. 3. How are ships' holds ventilated?

Ans. 3. Some are not ventilated at all, some have ventilators by the bulkhead, and the American clipper ships have large iron ventilators forward and aft.

Direct Examination resumed.

Ques. 1. What kind of a ship was the Pons Aelii?

Ans. 1. A very good ship.

AMOS NOYES.

Sworn to and subscribed before me, special commissioner, this 9th Dec'r, 1856.

CUTLER McALLISTER,
Special U. S. Commissioner.

Examination adjourned until to-morrow, Dec'r 10, 1856, at 2 P. M.

CUTLER McALLISTER,
Special Commissioner.

Deposition of Ric'd Lowry.

SAN FRANCISCO, CALA., *December 10th*, 1856.

Examination this day resumed in the foregoing case. Richard Lowry, a witness on behalf of the appellee, duly sworn, testifies as follows, to wit:—

Direct Examination.

Questions by Saunders and Hepburn, Proctors on behalf of Appellee.

Ques. 1. What is your name, age, and occupation?

Ans. 1. My name is Richard Lowry, age 37, and I am a stevedore.

Ques. 2. Are you the stevedore who discharged the ship "Pons Aelii;" if so, state whether you saw the hatches opened, and how the soap in the ship was stowed?

Ans. 2. I am the stevedore who discharged the ship, and saw the hatches opened; the soap in the ship was stowed well.

Ques. 3. What was the condition of the soap as to dryness?

Ans. 3. The soap appeared good on the surface, but as we worked into the body we found it damper.

Ques. 4. What was the condition of the boxes for handling that were wet, in comparison with those that were dry?

Ans. 4. The boxes that were dry were much better to handle than those that were wet; the nails would hold much better in the dry boxes than they would in the wet ones.

Ques. 5. State whether the boxes were repaired, by whom, and for what cause?

Ans. 5. The boxes were repaired by one man from the ship and by one of my men, owing to the nails being eat off by some acid, or something, I don't know what it was, that seemed to work out from the soap, that the soap was made of.

Ques. 6. Were the boxes alike in appearance and quality?

Ans. 6. I could see no difference in the boxes, the larger sized may have been in little better condition than the smaller ones.

Ques. 7. Where were the boxes stowed?

Ans. 7. In the after part of the ship.

Ques. 8. What was the condition of the deck of the ship?

Ans. 8. Very good.

Ques. 9. Did you see any traces of salt water on the top of the boxes or on the ceiling of the deck.

Ans. 9. I did not. I saw some places marked with chalk by some parties. I tried them with my knife and found them perfectly tight.

Ques. 10. What was the cause of the condition of the soaps?

(Question objected to.)

Ans. 10. I am not acquainted with the manufacture of soap, but should imagine the condition of the soap was caused by some acid used in the manufacture of it, as I found it damper the further I worked into the body of it; some of it was wet in the body where I found it dry on the surface; in working into the interior of it, I found some of the boxes in four pieces, the nails entirely eaten off.

Ques. 11. Have you ever discharged a ship before that was perfectly dry and found the soap in a wet condition?

(Question objected to.)

Ans. 11. I never discharged a ship with a mass of soap aboard of it but that I found a portion of it damp.

Ques. 12. Was anything stowed upon the soap?

Ans. 12. There was nothing that I know of.

Ques. 13. What was the condition of the rest the cargo in casks, cases, &c.?

Ans. 13. Generally good, there were a few casks that were in pretty bad order, they were casks of hardware, and stowed in the bottom of the ship, and some casks stowed in the bottom of the ship which had tin cases of white lead in them were in bad order.

Cross-examination.

Ques. 1. What amount of salt was on board of this ship stowed in the hole.

Ans. 1. I don't know exactly, from fifty to seventy tons.

Ques. 2. Was the soap in question stowed upon the salt you speak of?

Ans. 2. A portion of it, a small portion of it was.

Ques. 3. Was the salt in bulk or in bags, and if in bags, what was the condition of the bags?

Ans. 3. The salt was in bags, the condition of the bags were good until moved, when moved a portion of them would break, a portion of them were in a bad condition, and a portion were in very good condition.

Ques. 4. How many tiers deep were the boxes of soap stowed?

Ans. 4. The fore part of the soap was from three to four tiers high, as it went out to the after part of the ship it was stowed from the bottom of the hole to the deck, that stowed on the salt was three or four tiers high, and that in the after part of the ship about twenty-five tiers high, as far as I can judge.

Ques. 5. State whether this soap would have been injured in your judgment if the ship had made the voyage from England to this port

with the same amount of cargo on board as when she arrived in this port?

Ans. 5. I should say it would if stowed in the same way.

RICH'D LOWRY.

Sworn to and subscribed before me this 10th day of December, 1856.

GEO. PEN JOHNSTON,
U. S. Commissioner.

Examination adjourned until to-morrow, Dec. 11th, 1856, at 2 P. M.

GEO. PEN JOHNSTON,
U. S. Commissioner.

SAN FRANCISCO, CAL., *December 11th*, 1856.

Examination adjourned until to-morrow, Dec'r 12th, at 2 P. M., parties not being prepared for further proceedings.

GEO. PEN JOHNSTON,
U. S. Commissioner.

SAN FRANCISCO, CAL'A, *December 12th*, 1856.

Examination adjourned until to-morrow, December 13th, at 2 P. M., parties not being prepared for further proceedings.

GEO. PEN JOHNSTON,
U. S. Commissioner.

SAN FRANCISCO, CAL'A, *December 13th*, 1856.

Examination adjourned until Monday, December 15th, 1856, at 2 P. M., the parties not being ready to proceed with the examination.

GEO. PEN JOHNSTON,
U. S. Commissioner.

Deposition of Thomas Harris.

SAN FRANCISCO, CAL'A, *December 15th*, 1856.

Examination this day resumed in the foregoing case. Thomas Harris, a witness in behalf of the appellee, duly sworn, testifies as follows, to wit:—

Direct Examination.

Questions by Saunders & Hepburn, Proctors on behalf of Appellee.

The writing down of questions waived.

I was discharging clerk of the ship "Pons Aelii," and I discharged her cargo in this port in June or July, 1855. She had some three or four thousand boxes of soap on board, of different sized boxes; the soap that was in the smaller sized boxes was the worst. I should say

it was a great deal inferior quality of soap, besides being in a worst condition. The condition of the boxes was bad; we had to have one or two men in the hole of the vessel all the time to nail them together, so they could be discharged. I account for the condition of the boxes by the evaporation of the soap, which would rot the boxes and cause the nails to rust so that they could not hold, and cause the boxes to tumble to pieces. I saw a great many of the boxes open, because they tumbled to pieces from handling. We had, during the time we were discharging the soap, two coopers, besides the men we had in the hole, repairing the boxes, nailing them together, so that they could be taken across to the warehouse from the ship.

Ques. 1. Describe the soap.

Ans. 1. Most of it was very mouldy and green in the middle of the boxes, as well as around the outside of them, which would naturally show the soap was in a green state when it was shipped, according to my opinion.

Ques. 2. Did you see any traces of salt water on these boxes?

Ans. 2. I think there were a few of the boxes with the traces of salt water on them, but these were the larger ones, according to my recollection.

Ques. 3. Was there any difference between the outside boxes and the boxes in the centre of the bulk? If so, describe the difference.

Ans. 3. Yes, there was a material difference; the boxes upon the outside were in a better condition than those on the inside; the outside boxes were dryer than the inside boxes, owing to their being more exposed to the air.

Questions by Manchester & Hodges, Proctors for Libellants.

Cross-examination.

Ques. 1. Did you state upon the trial of this cause before Judge Hoffman that some two or three hundred of these boxes were stained by salt water? and if so testified, was that the fact?

Ans. 1. My testimony before Judge Hoffman was correct. I have stated before, there were a few of the larger boxes stained by salt water, but I cannot now recollect how many.

Ques. 2. State what amount of salt was stowed in the hole, how stowed, and where stowed?

Ans. 2. There was some salt in bags, but *but* what quantity I cannot tell, nor where it was stowed; what I stated before Judge Hoffman in reference to the salt is correct.

Ques. 3. How many casks of beer were stowed in the ship's hold?

Ans. 3. I cannot tell how many—there was a good deal; by reference to my book I find there were fifty hogshead of bulk ale and from one to two hundred casks of bottled ale.

Ques. 4. Are you a practical chemist?

Ans. 4. "I am not."

Ques. 5. Are you acquainted with the manufacture of soap, or the contents or ingredients of which it is composed or made?

Ans. 5. I am a little, sufficiently to tell whether the soap is a good or bad article.

Ques. 6. Please state the ingredients, if you know, of which soap is made?

Ans. 6. Soap is made from fat, rosin, Prussian blue, lime, and many other ingredients.

Ques. 7. Were you ever engaged in manufacturing soap?

Ans. 7. I never was. My knowledge of soap is derived from having been engaged in the manufacture of candles. I did not analyze any of this soap.

THOS. HARRIS.

Sworn to and subscribed before me this 15th day of Dec'r, A. D. 1856.

GEO. PEN JOHNSTON,
U. S. Commissioner.

Deposition of Geo. Campbell.

Also, on the same day, George Campbell sworn for the claimants.

Direct Examination.

Questions by Sanders & Hepburn.

Writing of questions waived.

I am a merchant in this city, and am in the habit of importing the soap of Mathew Steele & Son; there are four kinds that come to this market—the yellow, the white, the Castile, and the mottle—the yellow soap is an inferior soap; the white and mottle soap about the same in quality, a good deal better than the yellow; the Castile is the best. The yellow soap is shipped in what is called a very green condition, that is, moist. I saw the soap on the Pons Aelii; from the appearance of the yellow soap it was shipped green; the boxes appeared as if they had been saturated with water, and the soap somewhat shrunk. I saw the soap on board the ship and the boxes; in my opinion, the discoloration on the boxes was from the moisture proceeding from the soap; the length of the voyage and the heat of the hold would have considerable influence in drawing the moisture from the soap to the boxes. The yellow soap of Mathew Steele & Son generally arrives at this port in fair condition, but the boxes more or less stained by moisture and sweat. Not being an expert, I cannot say what amount of moisture the yellow soap contains when shipped; I should think about thirty per cent. New ships are generally ventilated; old ones not; the intention is to prevent sweat and preserve the ship's timbers. Experience has taught that it decreases the sweat, but does not entirely prevent it. My

it was a great deal inferior quality of soap, besides being in a worst condition. The condition of the boxes was bad; we had to have one or two men in the hole of the vessel all the time to nail them together, so they could be discharged. I account for the condition of the boxes by the evaporation of the soap, which would rot the boxes and cause the nails to rust so that they could not hold, and cause the boxes to tumble to pieces. I saw a great many of the boxes open, because they tumbled to pieces from handling. We had, during the time we were discharging the soap, two coopers, besides the men we had in the hole, repairing the boxes, nailing them together, so that they could be taken across to the warehouse from the ship.

Ques. 1. Describe the soap.

Ans. 1. Most of it was very mouldy and green in the middle of the boxes, as well as around the outside of them, which would naturally show the soap was in a green state when it was shipped, according to my opinion.

Ques. 2. Did you see any traces of salt water on these boxes?

Ans. 2. I think there were a few of the boxes with the traces of salt water on them, but these were the larger ones, according to my recollection.

Ques. 3. Was there any difference between the outside boxes and the boxes in the centre of the bulk? If so, describe the difference.

Ans. 3. Yes, there was a material difference; the boxes upon the outside were in a better condition than those on the inside; the outside boxes were dryer than the inside boxes, owing to their being more exposed to the air.

Questions by Manchester & Hodges, Proctors for Libellants.

Cross-examination.

Ques. 1. Did you state upon the trial of this cause before Judge Hoffman that some two or three hundred of these boxes were stained by salt water? and if so testified, was that the fact?

Ans. 1. My testimony before Judge Hoffman was correct. I have stated before, there were a few of the larger boxes stained by salt water, but I cannot now recollect how many.

Ques. 2. State what amount of salt was stowed in the hole, how stowed, and where stowed?

Ans. 2. There was some salt in bags, but *but* what quantity I cannot tell, nor where it was stowed; what I stated before Judge Hoffman in reference to the salt is correct.

Ques. 3. How many casks of beer were stowed in the ship's hold?

Ans. 3. I cannot tell how many—there was a good deal; by reference to my book I find there were fifty hogshead of bulk ale and from one to two hundred casks of bottled ale.

Ques. 4. Are you a practical chemist?

Ans. 4. "I am not."

Ques. 5. Are you acquainted with the manufacture of soap, or the contents or ingredients of which it is composed or made?

Ans. 5. I am a little, sufficiently to tell whether the soap is a good or bad article.

Ques. 6. Please state the ingredients, if you know, of which soap is made?

Ans. 6. Soap is made from fat, rosin, Prussian blue, lime, and many other ingredients.

Ques. 7. Were you ever engaged in manufacturing soap?

Ans. 7. I never was. My knowledge of soap is derived from having been engaged in the manufacture of candles. I did not analyze any of this soap.

THOS. HARRIS.

Sworn to and subscribed before me this 15th day of Dec'r, A. D. 1856.

GEO. PEN JOHNSTON,
U. S. Commissioner.

Deposition of Geo. Campbell.

Also, on the same day, George Campbell sworn for the claimants.

Direct Examination.

Questions by Sanders & Hepburn.

Writing of questions waived.

I am a merchant in this city, and am in the habit of importing the soap of Mathew Steele & Son; there are four kinds that come to this market—the yellow, the white, the Castile, and the mottle—the yellow soap is an inferior soap; the white and mottle soap about the same in quality, a good deal better than the yellow; the Castile is the best. The yellow soap is shipped in what is called a very green condition, that is, moist. I saw the soap on the Pons Aelii; from the appearance of the yellow soap it was shipped green; the boxes appeared as if they had been saturated with water, and the soap somewhat shrunk. I saw the soap on board the ship and the boxes; in my opinion, the discoloration on the boxes was from the moisture proceeding from the soap; the length of the voyage and the heat of the hold would have considerable influence in drawing the moisture from the soap to the boxes. The yellow soap of Mathew Steele & Son generally arrives at this port in fair condition, but the boxes more or less stained by moisture and sweat. Not being an expert, I cannot say what amount of moisture the yellow soap contains when shipped; I should think about thirty per cent. New ships are generally ventilated; old ones not; the intention is to prevent sweat and preserve the ship's timbers. Experience has taught that it decreases the sweat, but does not entirely prevent it. My

opinion is that the ship Pons Aelii is getting up in years—about twelve or fourteen years of age. Ventilators were scarce in those days.

Cross-examination.

Questions by Manchester and Hodges, Proctors for Libellants.

Ans. I made no thorough examination of this soap; I was not called on to make any. What I have stated of Mathew Steele & Son's yellow soap I derived from the soap we have received; but I saw this soap in the warehouse as well as on the ship; I am not an expert in the manufacture of soap.

GEORGE CAMPBELL.

Sworn to and subscribed before me this 15th day of December, A. D. 1856.

GEO. PEN JOHNSTON,
U. S. Commissioner.

Examination adjourned until to-morrow, December 16th, 1856, at 2 P. M.

GEO. PEN JOHNSTON,
U. S. Commissioner.

Deposition of Geo. Simpton.

SAN FRANCISCO, CAL'A, *December 16th*, 1856.

Examination resumed. George Simpton was duly sworn as a witness on behalf of the appellees and claimants, and deposes and says as follows:—

Respective proctors present.
Captain George Simpton sworn.

Direct Examination.

I was Port Warden in June, 1855, and surveyed the ship "Pons Aelii" and her cargo. I was satisfied then, and always have been, that the damage to the soap was caused by its own contents. The appearance of the boxes was like all other boxes of soap from England that I have seen. I did not see any traces of salt water on any of the boxes; I think no injury was occasioned by salt water to the soap—if any, very trifling. I examined the deck for leaks, and found two or three frivolous leaks of no importance. I saw no evidence of recent re-corking of decks, and if there had been any in this harbor I think I would have seen it. The Pons Aelii was a good, strong ship.

G. SIMPTON.

Sworn and subscribed before me this 16th day of Dec'r, A. D. 1856.

GEO. PEN JOHNSTON,
U. S. Commissioner.

Deposition of J. Kreyenhagen.

Julius Kreyenhagen sworn as a witness for appellees and claimants.

Direct Examination.

I visited and examined the soap from the "Pons Aelii" on the wharf and in store, and opened five or six boxes taken indiscriminately from the bulk. All the boxes were stained more or less, and the soap looked very little damaged—was sweated; the cause of this was principally from the bad quality of the soap; all the soap from England is generally shipped in a poor condition, containing so much water, or soda, or builla; the sweat had principally come through the joints of the boxes. This soap was worth from six to six and a half cents per pound. I should think this soap, when shipped, contained from fifty to seventy-five per cent. of water. I am a dealer in soap; I compared this cargo of soap with another cargo of Steele's English soap imported at that time; the appearance of this cargo was better than that of the other ship.

Cross-examination.

I am not a chemist, and did not analyze any of this soap. I derive my information respecting the manufacture of soap from observation from what I have heard, and from "Ure's Dictionary."

JULIUS KREYENHAGEN.

Sworn to and subscribed before me this 16th day of Dec'r, A. D. 1856.

GEO. PEN JOHNSTON,
U. S. Commissioner.

Examination adjourned until to-morrow, December 17th, A. D. 1856, at 2 o'clock P. M.

GEO. PEN JOHNSTON,
U. S. Commissioner.

SAN FRANCISCO, CAL'A, *December 17th*, 1856.

Examination of witness in this cause this day resumed.

Deposition of M. Newcombe.

Martin Newcombe sworn as a witness for the appellees and claimants.

Direct Examination.

My name is Martin Newcombe, my age 37, and I am a manufacturer of soap. I have been in the business of soap manufacturing since 1844. I examined some of Steele's yellow soap, belonging to

McKinley, Garrioch & Co., in Flint's warehouse, to-day; two boxes were opened; one of the boxes looked in good condition, the other was a little disfigured, as from bad handling. I mean by bad handling, the soap was not properly made. I saw some of the soap cracked: if it had been properly made this would not have been the case. I think it was badly handled from the times it was put in the pan until it was put in the boxes. The boxes were stained: in my opinion, the cause of the boxes being stained was from the moisture of both the wood and soap. I did not examine the kind of wood the boxes were made of. I think the wood was about a quarter of an inch thick, which is not thick enough for the soap boxes.

Cross-examination.

I learned the business of soap making in New York, and am engaged in it now. I have stated all I know about this soap.

MARTIN NEWCOMBE.

Sworn to and subscribed before me, this 17th day of December, A. D. 1856.

GEO. PEN JOHNSTON,
U. S. Commissioner.

Also on this day, came other witnesses in this cause.
Thomas Morse sworn as a witness for the appellees and claimants.

Deposition of Thos. Morse.

Direct Examination.

My name is Thomas Morse. My age is 50. I am the store-keeper at Flint's warehouse. I received a lot of soap from the ship Pons Aelii, imported by McKinley, Garrioch & Co. I have weighed some of the small boxes of yellow soap, marked 20 pounds. I weighed some last night, ten boxes, all of them were marked 20 pounds. The gross weight of the ten boxes was two hundred and two (202) pounds, the nett weight was one hundred and sixty-eight (168) pounds.

Ques. 1. Was application made to you by the agents of the ship to allow them to weigh some of the soap, and if so, when was this application made, and did you refuse to allow them to weigh it, and by whose orders?

(Question objected to by libellant's att'y.)

Ans. 1. Application was made to me about three months ago by Hellmann, Brothers & Co., to allow them to examine and weigh the soap. I could not permit them to do so, because I had received a letter from McKinley, Garrioch & Co., directing me not to allow them to weigh or examine the soap.

Ques. 2. Was the soap, or any portion of it, weighed since by Hellmann, Brothers & Co.?

Ans. 2. A portion of it was weighed by them about two months ago.

Ques. 3. Subsequent to the application of Hellmann, Brothers & Co., and previous to their weighing it, was some portion of the soap shifted in the warehouse? if so, state the manner of shifting it, by whose orders, and for what purpose.

(Question objected to by libellant's att'y.)

Ans. 3. A portion of the soap was shifted in the warehouse between the time of the application first made by Hellmann, Brothers & Co., and the time of their weighing it, by the order of Mr. Broadhurst, the business clerk of McKinley, Garrioch & Co. I took a portion of the front boxes and put them in the rear, and took a portion of the rear boxes and put them in front. Mr. Broadhurst stated to me that Hellman, Brothers & Co. were coming down to weigh some of the soap, and he wished me to place the heaviest boxes in front, so that they might weigh them.

Cross-examination.

Ques. 1. How long has the soap in question been stored in Flint's warehouse?

Ans. 1. About a year and a half.

Ques. 2. Where did you take the ten boxes from that you weighed last night?

Ans. 2. I took them from the top of the pile.

Ques. 3. Are the boxes you weighed more exposed to the air than the boxes in the centre of the pile?

Ans. 3. They were more exposed to the air, and the soap would likely be drier.

Ques. 4. Has not this soap been stored in your warehouse an unusual length of time?

Ans. 4. I presume it has, as we have never had a lot so long on hand before.

Ques. 5. Would soap become dryer by keeping?

Ans. 5. The front and top would become dryer, but the centre and back part of the pile would not according to my idea."

THOMAS MORSE.

Sworn to and subscribed before me this 17th day of December A. D. 1856.

GEO. PEN JOHNSTON,
U. S. Commissioner.

SAN FRANCISCO, CALA.,
December 23d, A. D. 1856.

On this day, before me, Geo. Pen Johnston, a Commissioner of the United States for the Districts of California, duly authorized to administer oaths, &c. &c., came Robert H. Waterman, a witness,

produced by the appellants in the foregoing cause, and being duly sworn testified as follows:—

Direct Examination.

My name is Robert H. Waterman. I have been a ship-master about fifteen years. I have had a great deal experience in stowing cargoes on board ship, and know how they should be stowed. Soap stowed twenty-five tiers deep, I should think was badly stowed, and would be apt to be injured. Ship-masters in stowing cargoes would stow them in reference to the strength of the packages; they would stow strong packages differently from frailer ones. It would not be proper stowage to stow this soap upon salt, unless there was something between them; the reason is that salt creates dampness, and we always stow other cargo separate from salt, that is, cargoes that can be damaged. In the Liverpool trade we never stow any perishable goods on or in the neighborhood of salt without something between.

Ques. 1. Is ale in bulk, in hogsheads, and bottled ale in hogsheads or casks, a good or bad cargo to have in the hold of a ship in reference to other cargo?

Ans. It is generally not, especially if stowed over other cargo.

Cross-examination.

I never saw the ship "Pons Aelii;" I never heard of her before.

R. H. WATERMAN.

Sworn to and subscribed before me, this 23d day of December, 1856.

GEO. PEN JOHNSTON,
U. S. Commissioner.

Also on the same day, the examination of witnesses in the foregoing cause was continued, and W. W. Coghill was duly sworn as a witness for the appellants and libellants.

Deposition of W. W. Coghill.

Direct Examination.

My name is W. W. Coghill; I am a merchant here in San Francisco; have been engaged in business in this city since March, 1852; I am a dealer in soap, but not the largest dealer in this city; I should suppose soap stored for fifteen or eighteen months in a warehouse would depreciate in weight; but I have never tested it, it would depend altogether upon the condition in which the soap arrived; if it came here perfectly dry, it would not depreciate in weight, but if not, it would in proportion to the exposure to the air.

W. W. COGHILL.

Sworn to and subscribed before me, this 23d day of Dec., A. D. 1856.

GEO. PEN JOHNSTON,
U. S. Commissioner.

Wm. Broadhurst recalled.

Also, on the same day, the examination of witnesses in the foregoing cause was continued. Wm. Broadhurst recalled, and examination continued as a witness for the appellants and libellants.

Wm. Broadhurst recalled. Direct Examination.

I am a salesman for McKinlay, Garrioch & Co., and sell a great deal of soap.

Soap stored in a warehouse for fifteen or eighteen months exposed to the air would depreciate very materially in weight.

I gave Mr. Morse orders to take the front face tier of the twenty pound boxes down, as they had been exposed to the full draft of air through the warehouse for eighteen months, or thereabouts, and consequently having lost very much in weight by evaporation, they were no fair sample of the average weight of the boxes; the remark I made to Morse was, that I wanted a fair sample of the average weight of the boxes. I gave Hellmann & Co. every facility to weigh what boxes they liked; they weigh some of the boxes that had been exposed to the air, and some that had not been; those exposed to the air weighed less than those that had not been so exposed.

Ques. 1. State whether in your experience as a dealer in soap, you have at any time tested the loss in the weight of soap by long storage and exposure to the air, and if so, how much the soap manufactured in Liverpool will depreciate in weight by long storage and exposure to the air?

Ans. 1. I have tested the depreciation in the weight of soap by actual experience. We had a shipment of soaps from Liverpool (Casey's soap), it was a good soap, and arrived in good condition, and the boxes were dry and not stained after having remained in the store about two years, the sixty pound boxes were sold. When the soap arrived, it weighed the marked weight—sixty pounds each, and when sold, two years afterwards, the sixty pound boxes weighed from thirty-four to thirty-eight pounds each, net weight.

WM. BROADHURST.

Sworn to and subscribed before me this 23d day of December, A. D. 1856.

GEO. PEN JOHNSTON,
U. S. Commissioner.

The respective parties to the foregoing cause, by their proctors,

waive all objection to the manner of the taking of the foregoing testimony.

GEO. PEN JOHNSTON,
U. S. Commissioner.

The Court, in rendering its decision in this cause, also took into consideration the following testimony, given by L. Charles Boye, upon the hearing of said cause before the District Court. This testimony is taken from the notes of testimony made by the District Judge, upon the hearing of said cause before the said District Court.

"I went down to examine the ship and soap on the 12th day of June, 1855. I found some of the seams on the water ways open in different places. It was obvious the vessel must have worked a great deal at sea. I tried some of these seams with my knife—they were open—the vessel evidently required caulking. It is our practice to caulk the vessel whenever we can at sea, if she requires it. If you have fair weather, it can be done easily."

And afterwards, to wit, on the 26th day of February, A. D. 1857, the proctors for the respective parties having been heard, and due deliberation having been had herein, now at this day the Court enters the following decree, in the following words, to wit:—

At a stated term of the Circuit Court of the United State of America, for the Districts of California, held at the court house in the City of San Francisco, on Wednesday the twenty-fifth day of February, in the year of our Lord one thousand eight hundred and fifty-seven.

Present: The Honorable M. Hall McAllister, Judge of said court.

Decree.

FINLAY MCKINLAY *et al.*
vs.
THE SHIP "PONS AELII," &c.

This cause came on to be heard at the present term of this Court, on appeal from the decree of the District Court of the United States, for the Northern District of California, upon the pleadings and proofs in the cause, and after hearing counsel for the respective parties, and due deliberation being had in the premises, it is ordered, adjudged, and decreed that the decree of said District Court, dismissing the libel in this cause, be, and the same is hereby affirmed with costs to be taxed.

M. HALL McALLISTER,
Judge, &c. &c.

Endorsed: Filed February 26th, 1857.

GEO. PEN JOHNSTON,
Clerk.

By CUTLER McALLISTER,
Deputy.

And afterwards, to wit, on the 26th day of February, A. D. 1857, the following order was duly issued by the Judge of the said Court in the words following, to wit:

Order fixing the amount of Stipulation on Appeal.

At a Stated Term of the Circuit Court of the United States of America, for the Districts of California, in Chambers in the City of San Francisco, on Thursday, the 26th day of February, in the year of our Lord one thousand eight hundred and fifty-seven.

Present, the Honorable M. Hall McAllister, Judge of said Court.

McKinlay, Garrioch & Co.
vs.
Ship Pons Aelii.

In Admiralty.

It is hereby ordered that the appellants, McKinlay, Garrioch & Co., upon the appeal of this cause to the Supreme Court of the United States, give security in the sum of three hundred dollars, and that in lieu of the ordinary stipulation required by the rules of this Court, the appellants may deposit in the registry of this Court the said sum of three hundred dollars.

San Francisco, February 26th, 1857.

M. HALL McALLISTER,
Judge, &c. &c.

Endorsed: Filed Feb'y 27, 1857.

GEO. PEN JOHNSTON,
Clerk.

By CUTLER McALLISTER,
Deputy.

And afterwards, to wit, on the 27th day of February, A. D. 1857, came the said appellant by his proctors and advocate, and filed in this Court the following notice of appeal to the Supreme Court of the United States.

Appeal.

Circuit Court of the United States,
for the Districts of California.

In Admiralty.

Finlay McKinlay & Alexander Garrioch, Appellants,
vs.
The Ship Pons Aelii, &c., Respondent.

To the Honorable the Supreme Court of the United States.

The appeal of Finlay McKinlay and Alexander Garrioch, the above named appellants, respectfully showeth, that on the 20th day of June, 1855, they filed their libel in the District Court of the

United States for the Northern District of California, against the above named ship Pons Aelii, her tackle, apparel, and furniture, in a cause civil and maritime, for the recovery of a certain quantity of goods and merchandise shipped by the appellants on board of said ship, at the port of Liverpool, England, to be transported and delivered to said appellants at San Francisco, in California, in good order and well conditioned as when received on board of said ship, as per bill of lading, which the master and owners of said ship failed to do, and that said ship was arrested upon process issued upon said libel, and was subsequently discharged, on William Morrish, the master thereof, filing his claim and entering into the stipulations required by law; that the said claimant also filed his answer to said libel, and the appellants replied thereto, and such proceedings were had in the case that on the 10th day of January, 1856, a final decree was made and pronounced therein by the said District Court, that the said appellants' libel be dismissed with costs.

And after such final decree your Petitioners duly appealed therefrom to the Circuit Court of the United States for the Districts of California, and that the said cause was removed thereby into the said Circuit Court, and there tried anew, upon the original pleading and testimony taken anew in said Circuit Court, and such proceedings were had in the said Circuit Court, that afterwards, to wit, on the 25th day of February, 1857, the said Circuit Court made a final decree in the said cause, whereby it was ordered, adjudged and decreed, that the decree of the said District Court, dismissing the libel in this cause, be in all things affirmed, with costs, which said decree of the said Circuit Court is, as these appellants are advised, erroneous and ought to be reversed.

Wherefore these appellants appeal from the whole of said decree of said Circuit Court to the Supreme Court of the United States, and respectfully prays that the decree of the said Circuit Court and the libel, answer, pleadings, evidence, and all the proceedings in the said Circuit Court, may be sent to the Supreme Court of the United States without delay, and that the said Supreme Court will proceed to hear the said cause anew, upon the pleadings and proofs transmitted from said Circuit Court, and that the said decree of said Circuit Court, and every part thereof, may be reversed, as erroneous and contrary to laws, and a decree made in favor of these appellants for the amount claimed in their said libel, or such other decree as to the said Supreme Court shall seem just.

Dated San Francisco, 27th February, 1857.

F. McKINLAY
A. GARRIOCH.

MANCHESTER & HODGES,
Proctors.

J. B. MANCHESTER,
Advocate.

(*Endorsed*)

I hereby admit due personal service of a copy of the appeal to the Supreme Court of the United States, in this cause filed in the office of the clerk of the Circuit Court of the United States for the Districts of California.

Dated San Francisco, February 27th, 1857.

H. P. HEPBURN,
Proctor for Respt.

Pr. H. E. H.

Filed February 27th, 1857.

GEO. PEN JOHNSTON,
Clerk.

By CUTLER McALLISTER,
Dep'ty.

And afterwards, to wit, on the 4th day of March, A. D. 1857, the following citation was duly issued by the judge of the said Court in the words following, to wit:—

Citation.

UNITED STATES OF AMERICA, *ss.*

To William Morrish, claimant of the ship "Pons Aelii," &c., greeting:—

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the City of Washington on the first Monday of December next, pursuant to an appeal filed in the Clerk's office of the Circuit Court of the United States for the Districts of California, in and for the Northern District aforesaid, wherein Finlay McKinlay and Alexander Garrioch are appellants, and you are appellee, to show cause, if any there be, why the decree in said appeal mentioned should not be reversed, and speedy justice should not be done to the parties in that behalf.

Witness the Honorable Roger B. Taney, Chief Justice of the said Supreme Court of the United States, this fourth day of March, in the year of our Lord one thousand eight hundred and fifty-seven, and of the Independence of the United States the eighty-first.

M. HALL McALLISTER,
Judge, &c. &c.

Endorsed.

I hereby admit due personal service of a copy of the within cita-

tion filed in this cause in the office of the Clerk of the Circuit Court of the United States for the Districts of California.

Dated, San Francisco, March 4th, 1857.

H. P. HEPBURN,
Proctor for Claimants.

Filed March 4th, 1857.

GEO. PEN JOHNSTON,
Clerk.

By CUTLER McALLISTER,
Deputy Clerk.

Clerk's Certificate.

I, Geo. Pen Johnston, Clerk of the Circuit Court of the United States for the Districts of California, do hereby certify the foregoing pages, from one to one hundred and nineteen inclusive, to be a transcript of the record of the said Circuit Court in the cause named at the beginning hereof, being true, full and correct copies of the original papers on file herein.

In testimony whereof I have hereunto set my hand and affixed the seal of said Court this fifth day of March, in the year of our Lord one thousand eight hundred and fifty-seven, and of our Independence the eighty-first.

[SEAL.] GEO. PEN JOHNSTON,

By CUTLER McALLISTER,
D. C.

Filed 22d July, 1857.